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THE
REPRESENTATIVE HISTORY
OF
GREAT BRITAIN
AND
IRELAND

AND A HISTORY OF
THE HOUSE OF COMMONS
HISTORY

COUNTIES, CITIES AND BOROUGHS
OF THE

HOUSE OF COMMONS.

BY T. H. B. OLDFIELD.
VOL. I.

IN SIX VOLUMES—VOL. I.

LONDON:

PRINTED FOR BALDWIN, CRADOCK, AND PAY,
PATERNOSTER-ROW.

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HISTORY
OF THE
HOUSE OF COMMONS.

VOL. I.

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THE
REPRESENTATIVE HISTORY
OF
GREAT BRITAIN
AND
IRELAND:

BEING A HISTORY OF
THE HOUSE OF COMMONS,
AND OF THE
COUNTIES, CITIES, AND BOROUGHES,
OF
THE UNITED KINGDOM,
FROM THE EARLIEST PERIOD.

BY T. H. B. OLDFIELD.

"Without a parliamentary reform, the nation will be plunged into new wars: without a parliamentary reform, you cannot be safe against bad ministers; nor can good ministers be of use to you. No honest man can, according to the present system, continue minister."—*Pitt's Speech, 1782.*

"If an Englishman," said the great Frederick of Prussia, "has no knowledge of those kings that filled the throne of Persia, if his memory is not embarrassed with that infinite number of popes that ruled the church, we are ready to excuse him: but we shall hardly get the same indulgence for him, if he is a stranger to the origin of parliaments, to the customs of his country, and to the different lines of kings who have reigned in England."—*Kett's Elements of General Knowledge, Vol. II., Page 3.*

IN SIX VOLUMES—VOL. I.

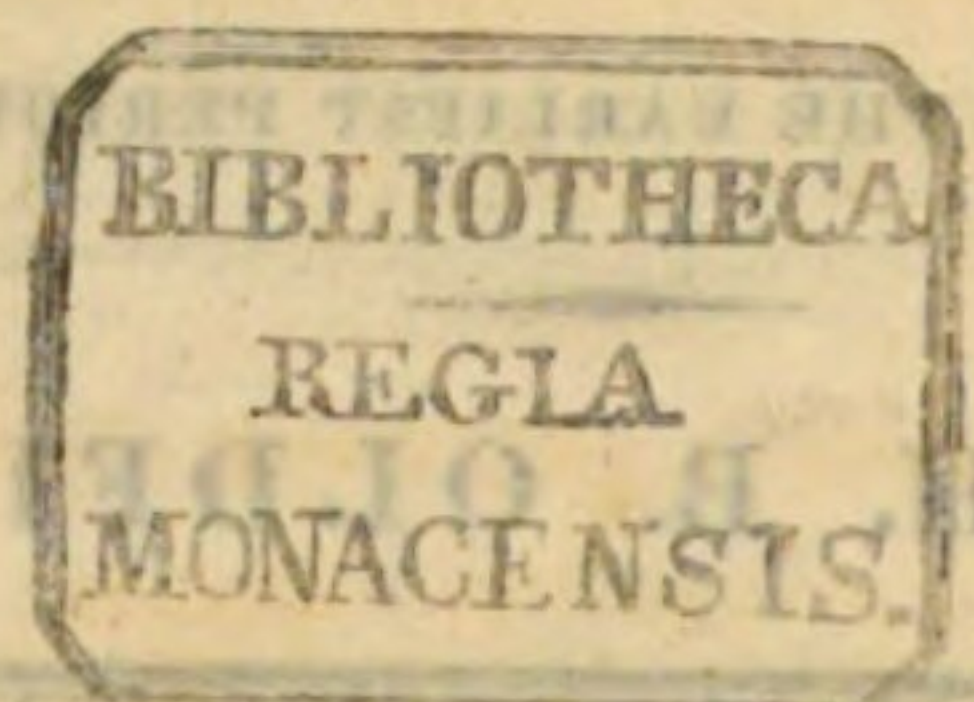
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1816.

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...the history of the House of Commons, and of the counties, cities, and boroughes, of the United Kingdom. The history of the House of Commons, and of the counties, cities, and boroughes, of the United Kingdom. The history of the House of Commons, and of the counties, cities, and boroughes, of the United Kingdom.

IN SIX VOLUMES—VOL. I.

London:

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1818

DEDICATION

TO THE

HAMPDEN SOCIETY.

MY LORDS AND GENTLEMEN,

THE Author believing these pregnant times to be labouring with causes leading to a recovery of the English Constitution, from that malady which is no less apparent than the noon-day sun, he has felt encouraged not only to revise and improve the last four volumes of the present series, but likewise to compose those two which, from the nature of their contents, now stand the first in order.

Whether a Dedication be designed to give praise or to receive protection, the Author has but one choice:—To the HAMPDEN SOCIETY he dedicates his work.

Among his motives, are gratitude and hope. To patriot men, who associate to save his country, he feels

gratitude. By the exertions of a phalanx drawn from the landed interest, a phalanx whose numbers, whose talents, whose property and honourable characters, give weight to their opinion, and influence to their example, he is inspired with hope.

How many of the people for redress of their grievances have already rallied around the Society's Standard, by enrolling themselves as petitioners for the constitutional reformation it seeks, the Author is not exactly informed; but they certainly amount to no inconsiderable proportion of England's population.

Thus encouraged, the Society will proceed with alacrity, at once deriving and imparting a lively satisfaction, at once impressed with and impressing a settled confidence of ultimate success.

While the Society, appealing to truth, to justice, and to the spirit-stirring principles of our once free government; as well as consulting the neglected opinion, the slighted understanding, and the wounded feelings of the nation, shall steadily hold on its course, England will still more fully declare her sentiments; nor will Wales, Scotland, or Ireland, prove deaf to the voice of wisdom, or dead to the example of public virtue.

In the first part of this History will be found, supported on the best authorities, a general account from the earliest periods of the representative branch of the English Legislature. Researches into antiquity in support of a right to efficient representation, which is synonymous with a right to political liberty, may to the philosopher, who is

conversant with the grounds on which all men at all times are entitled to freedom, be deemed works of supererrogation :

But, as servile writers pretend to draw from ancient records proofs against the nation's claim to freedom, the Author by refuting their fallacies flatters himself he shall gratify his readers.

The last four volumes of this work chiefly consist of separate memoirs of boroughs brought down to the present time. Here will be seen a disgusting picture of venality and baseness, of profligacy and groveling vice, which might well have furnished the imagination of a *Burke* with the idea of a "swinish multitude;" as twenty years before he used that expression, he had termed these boroughs "*the shameful parts of our constitution, our opprobrium, and the slough of slavery, which we were not able to work off.*"*

Although it suited *Burke*, as an orator, occasionally to eulogize liberty, he never was its friend. In reference to his own œconomical reform, (the vanity of which is seen in our present condition) as contradistinguished from the parliamentary reform of others, it was his heart that spoke when he said, "I do not claim half the merit for what I did, as for what I prevented from being done."†

In defence of *close* boroughs, it has been boasted that they have sometimes given seats in Parliament to men of *genius* and *merit*. Is it, then, a justification of despotism, that a despot sometimes, in the way of variety, effects his

* Speech, April 19, 1774.

† Letter to a Noble Lord, 23.

purposes by the instrumentality of "genius," or through the agency of men, to whom, in any sense, the term "merit" can be applied?

Are we to receive it as an apology for a Peer who plunges a dagger into the vitals of the constitution, that he does it by the hand of a man of "genius?" Or shall we acquit him of the guilt of treason against our liberties, because the agent he selects has displayed "*merit*" as a financier, or a political œconomist, as a soldier, an orator, or a scholar; while the "*merit*" which decides the recommendation of him to a seat in the House of Commons, is his being a faithful partizan in factious politics, and a true liege man of the lord of the borough that plays the farce of his election? Which, among our noble borough patrons would, on the score of *genius* and merit, surprize an ANDREW MARVEL with a return to Parliament?

Away, then, with every apology for close boroughs! In as much as the INEQUALITY of representation, is by far the worst feature of that complicated wrong by which the liberty and property of the nation are given into the hands of the borough faction, so the close borough link is the strongest in that chain of our subjugation, which you are associated to rend asunder.

Be not, generous associaters, discouraged! Truth, elicited by discussion, rapidly dissipates the mists of ignorance and error by which our prospects of a renovated constitution have been obscured. Success, if merited by exertion, awaits us. Nature our friend, justice our protection, principle our guide, miracle alone can frustrate our hope. Miracle is not at the call of vice and oppression.

Could indeed our adversaries hold Providence spell-bound, could they bind intellect in chains of brass, or confine the sweet influences of wisdom in fetters of iron, then truly might we tremble. Or could the borough faction eradicate from the bosom of man all consciousness of right and wrong; obliterate the love of liberty; extinguish the hate of slavery; annihilate the preference of security to the chain, or of enjoyment to the driver's lash; could they divest the human heart of scorn, disgust, indignation, and revenge, then indeed might we despond.

But those adversaries are unwillingly doing the work of allies. Daily and hourly are they awakening the nation to serious thoughts of legislative reform, convincing its understanding of the necessity, and calling in the aid of its feelings to make the impression indelible, while infatuated as they are, it is not in their power to recede.

When an interest so lively has been recently taken in the spiritual welfare of the Hindoos, as well as for averting from the Negroes the horrors of the Slave Trade, as to have produced in each case nearly a thousand petitions to Parliament for that humane object, must not a still more intense feeling for the rights and liberties, the prosperity, the morals and happiness of our own nation, vibrate in the hearts of our countrymen, ready for expression at your patriot call?

At an epoch also when, by a magnificent discovery in the nature of mind, knowledge is readily furnished with the wings of a dove, to carry with celerity its cheering light to every cottage in the realm, while to plume and to invigorate those wings is a noble impulse of our country, have we not, in the principle of that impulse, an assurance that rea-

son and patriotism are now too much awake, to admit that the counsels of the HAMPDEN SOCIETY will be despised, or to conceive that its efforts can prove abortive?

Trusting that my own humble labours may be usefully subservient to those of the Society, I have the honour to subscribe myself, with the greatest respect,

My Lords and Gentlemen,

Your most obedient humble Servant,

T. H. B. OLDFIELD.

PREFACE.

IN entering upon a work of such magnitude and importance as a REPRESENTATIVE HISTORY OF GREAT BRITAIN AND IRELAND, the Author feels most sensibly the responsibility he has imposed upon himself; and, to acquit himself in the faithful discharge of his duty, he has had recourse to the best authorities he could obtain; and the result proves that the Representative System is as ancient as the establishment of civil society in the world.

The Dyots in Germany, the Tiers Etat in France, the Cortes in Spain, and the Legislative Assemblies in every nation in Europe, were all composed of the Representatives of Cities and Districts; and it cannot be imagined that the Parliament of England alone, originated in an Oligarchy of Barons or feudal chiefs, when that assembly is proved to have existed for so many centuries before the feudal system was known.

Cæsar acknowledges that the *Commune Concilium* of Britain chose Cassibelanus for their leader, and Pughe the celebrated Welch

antiquarian has proved from the Tryads, or ancient records of the Britons that the *Kyfr-y-then* of the ancient British was the *Commune Concilium* mentioned by Cæsar, afterwards called the *Wittena-Gemote* of the Saxons, and which assumed the name of *Parliament* in the reign of Edward the Confessor, who had received his education in France.

That this was a representative assembly, elected by the people, is proved by the Saxon View of Frankpledge, so ably demonstrated by that learned and venerable patriot the late Granville Sharp, Esq. ; and that not only the Legislative Body, but every executive officer from the Tythingman to the Ealderman, or chief magistrate of a county, was elected by the respective Hundreds annually assembled in the County Court.

The learned Seldon also proves from Hovedon that the Conqueror assembled a Parliament in the year 1070, the fourth year of his reign, which was composed of twelve Representatives returned out of every county : who confirmed the laws of Edward the Confessor, which the King bound himself to keep, but never adhered to his solemn engagement.

The assembling of a Parliament composed of four representatives from each county, in the 49th Henry III., was what Carew calls “throwing off the yoke of the Conqueror, and the redemption of the people from slavery.”

It was the re-establishment of the ancient form of government which existed from the earliest times, but had been wrecked in the same tempest that had overturned the Saxon Throne, and it is as absurd to suppose that we had no representative Parliament antecedent to the forty-ninth of Henry III., as to assert that we had no King prior to the same period.

The great authorities we have had recourse to, are supported by records, charters, and legal documents which defy contradiction, and establish the constitution of Parliaments on a basis not to be shaken.

That the representation was *equal*, and the right of suffrage *general*, in the Housekeepers paying taxes, or, as it is now termed, scot and lot, is proved from the Statutes at large, and from the earliest history of every County, City, and Borough, in the kingdom.

The number of members in the Parliament summoned by the Conqueror were

twelve for each county, and four in that of the forty-ninth of Henry III., and the Electors till the eighth year of Henry VI., were all those bearing scot and lot. Even Freeholders of forty shillings per annum, were never known as possessing exclusive rights of election, till the enactment of the famous disfranchising statute of that year.

The same right of election continues to this day in all those Cities and Boroughs where it has not been altered by the acceptance of Charters, establishing exclusive privileges, as it is retained in Westminster, Lewes, and many other places, or where they have not been deprived of it by resolutions of Committees of the House of Commons, who have in general differed with each other in their determinations wherever this right has been disputed, and they have once departed from the ancient letter of the Constitution, which says that Laws, to bind all, must be assented to by all.

After establishing these important principles, we proceed to the partial re-establishment of Boroughs in the eighteenth of Edward I., and the practice of discontinuing, restoring, and omitting them from that period to the revolution, by which means so many large Towns and Boroughs have been

deprived of the right of representation, that the whole system is reduced to a shadow, and, in the Boroughs which remain, the rights of election, to forms only ; as many of them are destitute of electors, and even of inhabitants ; and the members merely nominal and representing a nonentity.

The Inhabitants of Boroughs, which have been bought up by individuals, are in a state of the most abject political slavery, and the remainder which, have been deprived of the right of suffrage in order to vest it in a partial body, are placed in the situation of convicted felons ; who are the only persons constitutionally divested of the right of voting for a Representative in Parliament.

The corruption that was infused into the Representative System at the restoration of the Stuart family, and which has since contaminated the whole frame, has been more destructive of public morals than any other cause that can be assigned ; it is the root from which all other political crimes originate. He who receives a bribe, must commit perjury, and the person who gives it, is guilty of subornation ; but the individual offence is as nothing compared with the evil which, by wars and consequent taxation, has been brought upon the country.

The only remedy for all these evils is a fair and equal representation of the people, a Parliament that upon every question will speak the sense of the nation, instead of being the tool of a minister. The great Earl of Chatham concurred in this sentiment. The late Right Hon. William Pitt declared it in the House of Commons. It was the pillar on which the late Right Hon. Charles James Fox erected the standard of his popularity; and which the late Duke of Richmond, the first Marquis of Lansdown, Sir George Savile, Sir Charles Turner, Doctor John Jebb, James Martin, Esq., Granville Sharp, Esq., and all the departed patriots of the last generation united to promote.

We trust their descendants will not be less active in procuring this great reform, on which our Constitution, our natural rights, and our very existence, depends. It is not a favor we ask, it is a birthright we demand: and to which we have as just a claim as to the property we possess.

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HISTORY
OF THE
HOUSE OF COMMONS
OF THE
UNITED KINGDOM.

CHAPTER I.

History of the ancient Constitution of the Britons—their legislative Councils or Parliaments, and fundamental Principles of Government.

THE art of printing being unknown in the earlier ages, and time having injured the few ancient historical manuscript records; the effect of oral tradition being destroyed from much of the British language having been long obsolete, and in some parts totally lost, as is now the case in Cornwall, and from the extirpation of bardism by the Edwards, little more can be accurately known than is stated in this work.

At the time of Cæsar's invasion of Britain, the Britons and the Gauls on the continent

CHAP. I.  made use of the same language, a species of the old Celtic, corrupted a little by provincial articulation. Among the Britons with whom he fought were the Belgic Gauls or their descendants, who had been settlers about fourscore years before his invasion, and who had forced the native Britons northward, much in the same manner as they themselves were afterwards pushed by the Romans. The native Britons, who mingled with the Caledonians, and who were not Picts, were the ancestors of the Scots, inhabiting the western islands and the adjacent counties of Scotland, and who to this day, perhaps, speak a purer Celtic than either the modern Welch or Irish.

Doctor Hicks, and most English antiquaries, have formed a kind of confederacy, in imposing on the world opinions contrary to the evidence of history and common sense, and assert that the Britons borrowed their characters from the Saxons, in direct contradiction of Tacitus, who states that the Britons, and the ancestors of the present Welch, were well versed in the liberal arts and sciences; and if so, how can we possibly suppose them to be without characters? Besides this presumptive proof, innumerable monuments still remain bearing the characters of the ancient Britons, long prior in point of date to the Saxon invasion.

As the Saxons, when they invaded Britain,

were without any manner of character for writing, and were by all accounts totally ignorant of the use of letters, it is most reasonable to suppose that the Anglo-Saxon characters were actually borrowed from the ancient Britons. And this amounts to more than supposition, when they are compared with the monuments of British antiquity. CHAP. I.
~~~~~

Though the Britons and Saxons differed greatly in manners and inclinations, yet many names and terms were in common to both. This is proved from a careful inspection into the most early parts of the Saxon chronicle, which was continued for some hundred years, and appears to be the first monument of genuine English, or rather Anglo-Saxon literature. This monument, old and venerable as it is, were it printed in modern characters, would not be unintelligible to a north country man possessed of a moderate share of learning. And many of the Anglo-Saxon laws and proverbs are now understood by some of our common people. The long residence of the Romans in Britain could not introduce their language into common use; but that of the Saxons elbowed out the British, and maintained its ground against the Norman invasion. And though the celebrated lexicographer, Doctor Johnson, has asserted, in the preface to his dictionary, that the British language did not furnish any of the



CHAP. I. roots from which our English language springs, yet, upon a close examination of its etymology, a number of ancient British roots will be found equal to those which are stated to be of Saxon origin.

Although the history of the origin of most nations is in general enveloped with a mist of mythology, yet that of the ancient Britons has so much strong collateral evidence to adduce, as places certainty in the room of doubt, since the æra of *Hu the Mighty*, who led the first Cynori from Defrobani, called also *Summerland*, situate near the present site of Constantinople, “over the misty sea,” probably the German Ocean, into Britain; this appears to have been from about eight hundred to a thousand years prior to the Christian æra, taking into consideration the progressive population of Europe.\*

From their original proximity to Greece, many Greek words were adopted into the old British language; many Grecian customs and public diversions were in usage among the Britons, which were continued by the trade car-

\* For a translation of these documents, which are the most valuable and curious remains in the ancient British, or perhaps any other language in Europe, I am indebted to my much valued friend William Owen Pughe, Esq. of Tan y Girt, near Denbigh, a man well known for his deep researches into antiquity.



ried on from Cyprus to Cornwall for tin. It CHAP. I.  
appears from Homer, that one of the chief glories  
of the Greeks was their genealogy. In this they  
were equalled by the ancient Britons, as the  
political rights of that people depended upon  
the authenticity of the family tree, and for the  
purity of which they are still rivalled by the  
modern Welch. The ancient Britons rivalled  
the Grecians in their hospitality to strangers.  
A great similarity reigned at the funereal games  
of both nations. There were no great difference  
between the wandering poets in Greece and the  
itinerant bards of Wales. Both people were  
equally lovers of dancing, running, wrestling,  
boxing, and pitching the discus. They enter-  
tained their reapers with music, which they  
used both at funerals and at weddings.

Some of the most authentic lists of the de-  
scents of the supreme elders of Britain prove  
*Caswallawn*, or the Cassibelanus of Cæsar, to  
be the seventh in line from *Dyvnwal Moelmud*.  
Those who have laid down canons of chrono-  
logy average thirty years for every descent, a  
generation. Thus fixing the time when he  
flourished at three hundred, and that of Pridain  
his father at three hundred and thirty years  
A. C.

Hence the proof of the earliest genealogical  
tables of the Britons becomes incontrovertible,  
as from their Tryads, so long as they preserved



CHAP. I.  their original institutions, were records of the most complete authority, and were then of the same consequence as title-deeds or patents have been among other nations in subsequent times. Every individual was compelled to claim his place in his tribe, by producing evidence of his descent through nine generations, and his collateral affinity to the ninth degree, otherwise he lost the privileges of a free native. The elders of tribes were still more interested in being able to produce undoubted records of their origin, to preserve their precedence in the country, in order that the supreme elder should be recognized at all times, though his functions were very seldom called into action, further than to preside in their supreme triennial conventions. And, so long as the Britons preserved their institutions unmixed, it was hardly possible for errors to occur in the tables of their genealogies. But since the subversion of their institutions, they became merely matters of curiosity and antiquarian research, and have since abounded with errors like all similar things, which have, in the lapse of time, passed through frequent transcriptions. And the Tryads of Dyvnwal Mochmud state, “that verse was the first vehicle  
“for memorials or records; by this, before the  
“time of *Hu*, were the first records of the  
“Cimbri preserved;” and its “inventor was  
“Gwyddon Ganhebon, who wrote on the stones,



“ called by his name, all the sciences and me-  
“ morials of the world,” which research into  
antiquity proves to be the pillars of Hermes.

CHAP. I.  
~~~~~

The great festivals of the Cymri being held during the solstices and equinoxes, if therefore the first establishers of such festivals were accurate in their astronomical observations, there has been fifty-two days of precession since the first of those festivals, which carries us up to about the time of Abraham. The summer and winter solstices were then on the first of May and the eve of the first of November; and the ancient Britons or Welch still celebrate those days in their own country with fires and various ceremonies. The last sad remains of their former splendid festivals !

About the year 940 A. D. Hywel Dda, or the Howel the Good, made a revision of the Tryads to meet the progress of the feudal system, then prevailing over Europe, and it may be seen in his laws that much of the feudal code had obtained a place : and also, that in the council then assembled, their chain or connection is so perfectly expletive, as to render this fact certain. The historical Tryads, and the laws of Hywel, mention Hu the Mighty, Dyvnwal Mochmud, and his father Prydain, as the three legislators who successively consummated the political system of the Cymri or Britons. The institutional Tryads are printed in the *Archæologia* of

CHAP. I. Wales, vol. iii., page 285, taken from one of the manuscripts of Thomas ab Joan, of Trew y Bryn, in Glamorganshire, of which he says, “copied by me from the books of Sir Edward Mansel, of Margam, in the year of our Lord Christ 1685.”

To quote a number of the institutions or regulations contained in these Tryads, would increase voluminously this chapter on British legislature; suffice it to say, that every Cymro, in proving an incontestible pedigree of his descent for nine generations, and his collateral affinity in the ninth degree on his acquiring “the age of beard,” he was intitled to all the rights, liberties, and immunities of a natural born Cymro, and received as such five acres of land for his future sustenance. The political divisions of territory among the Britons were the *Cantrw*, and the *Cymwd* or *Comot*, the compound word used in the Saxon *Witenagemote*, each of which had its particular court. The *Cantrw* is literally a hundred, because theoretically in law it consisted of a hundred hamlets, and contained nearly twenty-six thousand acres of land, but this could not be adhered to in practice. The *Cymwd* or *Comot* implies literally a mutual or simultaneous movement, a term originating in a nomadic state of society. In theory two of these *Comots* made a *Cantrw*, but in practice this was frequently not the case.

The Cantrw is the largest territorial division used among the Britons. CHAP. I.

No nation appears to have entertained a stronger sense of natural rights, even in the earliest times, than the Britons; for the Tryads state as the three bases of society, privilege, (right,) property, and law. The three guards and protections of society are of life, (person,) possession, and dwelling, and the protection of natural right. When a Briton had attained to all his privileges, he was called *Goresgynydd*, or super-ascendant, that is, one having original possession or seissin, for he obtains possession of his land, or maintenance of five free acres, and his presentation and privilege of *Pencenedyl*, or head of a tribe, as well as every other right belonging to a congenial Cymro.

There were three privileged high seats, in the original British language, *Gorsedds*. The first was that of the bards; the second of a king or lord of a commonwealth, with his verdict-men, (jury,) and his judges, and his barons, (Cymri possessed of land) for holding courts and pleadings in law. The third is the Gorsedd of federal convention, that is to say, a Gorsedd of a country, and to this appertains the homage of the two other high seats, being older from necessity and nature, under the discretion, (sense,) of the nation: for ordering and strengthening right, protection, and defence of the country, and its

CHAP. I. particular interests, with respect to the loyal
 ~~~~~ men of the commonwealth. For without this  
 convention, the other two Gorsedds could not  
 have possessed either privilege or stability.  
 This conventional voice of the nation originated  
 from the sense, power, and general will to make,  
 improve, and strengthen mutual law and judi-  
 cature, in insuring rights and privileges, and  
 the separate interests of all, whether foreign or  
 Cymri, and was composed of princes and heads  
 of tribes, and the wise men of a country and  
 border country.

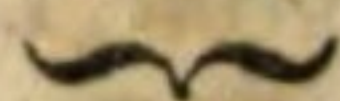
Vide Cæs.  
 Comm.  
 Tacitus,  
 Dion. Cass.

Spelman  
 Consil.  
 vol. i. 24.

Beda. Eccl.  
 Hist. lib. i.  
 cap. 1.

Authors of other countries bear sufficient  
 testimony that the Britons enjoyed a state of  
 freedom. They had their “commune con-  
 cilium” or parliament, called in their language  
 Cyfr-y-then, from their laws being framed in  
 and by an assembly of the people. When Lu-  
 cius, one of the kings of Britain, sent to Elu-  
 therius the pope for the code of Roman laws,  
 he, not ignorant of the British institutions,  
 answered: “Thou hast almost every page of  
 “them in thy kingdom; from them by the grace  
 “of God, by the council of thy kingdom, take  
 “the law, and by that power of God rule thy  
 “kingdom of Britain.” And as an evidence  
 that the Britons had not only political, but  
 municipal laws, there were in Britain twenty-  
 eight cities formerly the most distinguished,  
 besides innumerable castles defended by walls,



towers, ports, and barred gates, of course they CHAP. I.  
were not then a people itinerating in tribes,   
without government or fixed residence, as some  
have imagined. They had made considerable  
progress in civilization, by establishing a govern-  
ment, forming communities, as every country  
has done in a state of association. For wherever  
social compacts have marked out property, they  
have also given the means of protection. In  
their state of approximation towards social  
order, they were, like every nation verging from  
a nomadic state towards perfection, prone to  
war, but possessing policy, religion, and mora-  
lity, though not much refined in their manners.  
Their rulers, legislators, and priests, were the  
druids, who, with the bards, were alone distin-  
guished for genius and literature. At the inva-  
sion of Julius Cæsar, they had, like the Belgic Cæs. Com.  
Gauls, formed a government somewhat repub-  
lican; for in Britain they were not ruled by one  
king; the districts were governed by several  
petty kings, or rather chiefs, and like the Gauls  
they demanded, in cases of exigency, a public Ibid.  
council, in which they chose a governor or com-  
mander. By a similar assembly, *Cassibelane* was  
*permitted* to take the chief command in the  
administration and war, in which they were  
engaged with the Romans, their invaders. Al-  
though the Britons had their *servos* and *clientes*,  
servants or dependents, we do not find among



CHAP. I.  them any traces of a feudal system. Those prisoners of war, whose lives were spared, became their servants, and their clients were such as the name imports,\* who loved and honoured their masters, as their Tcisbantylès, who, behaving as fathers, protected them against injury, and cherished them as children, they became naturally attached to those whose superior sense, great power, or property, could defend or support them; and on disputes arising, they depended on them to plead their cause. In subsequent times, a person who employs an attorney or counsel to obtain redress for grievance, or protection for his person and property, has been called a client.

Thus were families formed from affection and gratitude on the basis of reciprocal good, when, unlike the feudal system of the Normans, the great nobly assumed a power to protect, but never to oppress, those too weak to resist their ambitious authority. Many have erroneously supposed the feudal system, *the first cause of all subversion of liberty*, to have been established in this country from this mutual dependence and family compact. But a comparison between its social customs and the one founded by the Normans, will shew their marked difference, both in practice and principle. All landed property in the British government was possessed independent of any superior; while in the Nor-

\* *Xλσιω*, I honour.



man feudal system every acre, mediately or immediately, under the king. By the British compact, the weak were protected against the powerful; but the feudal dependents were first stripped of their rights and possessions, then made the slaves of those who held their landed property. Thus were the natives compelled to toil as vassals and villains on the lands once their own, but which the Norman lords, their task-masters, held *in capite* under the king, as a reward for assisting him to reduce their country under his oppressive usurpation.

Bracton.

Such was the strong sense the Britons entertained of their natural rights and authority over those to whom they had delegated the power of governing, that even four hundred and eighty years intercourse with the Romans could not obliterate the practice of electing their kings. The Romans had no sooner abandoned South Britain, and absolved the inhabitants from their allegiance, than agreeably to their ancient custom they proceeded to elect or dethrone such governors as were found favourable or inimical to the common interest. Vortigern, sole monarch of South Britain, could not execute any affairs of moment without a general concurrence. The Britons, sensible that kings were only chosen to render service to, and not injure, the people by imbecility, indolence, or tyranny, deposed them, and chose others when they found them-

CHAP. I.



CHAP. I. selves in danger from such evils. No rank, however elevated, could with them sanction any conduct that endangered the welfare of the community. Vortigern, when incapable of protecting them, was forced to resign his regal honors to his son Vortimer, supposed more capable. Thus were paternal and filial attachments merged in the public good.

Dion. Cass.  
Life of Se-  
verus.

Hence it is evident the Britons enjoyed liberty in its most unlimited sense. They were their own legislators, and removed from their executive; well knowing that laws framed in wisdom, should not be administered by imbecility or wickedness: a right inherent to mankind in general which cannot be alienated. Among their ancient institutions did their celebrated King Arthur find that law which formed the ground-work of the Anglo-Saxon constitution relative to frank-pledge, by which he consolidated the kingdom of Britain, and happy would it have been for him and his people, if, after his success, he had maintained and established it in the countries which he conquered with free and equal liberty to all the inhabitants, the happy efforts of his successors would not have experienced so short a duration.



## CHAPTER II.

*Representation in the Time of the Saxons and Danes.*

VORTIGERN having invited Saxon auxilia- CHAP. III.  
 ries to defend the kingdom against the depreda-  
 tions of the Scots and Picts, where they came to  
 assist, they remained as conquerors. During a  
 struggle of fifty years, the sword supplied the  
 place of law. Conquest being completed, and  
 becoming possessors of the lands, they thought  
 of legislation to preserve to themselves their  
 newly acquired property. Then was the word  
*kyfr-y-then* changed for the Saxon-British word  
*witena-gemote*, formed, as some assert, of both  
 languages, from the German *wita*—a wise man,  
 and the British *gemote*, or *comot*, a council.  
 Hence its compound implied a council of wise  
 men, and the assembly of the people at large  
 was called the *mickle-gemote*. But it is with Ms. parl.  
c. 1.  
 great reason to be presumed, that its origin is  
 of much earlier date than that of the Saxons,  
 as we find it exists still among the Persians and  
 Tartars: as *wuttun* in their language implies  
 patria, or native country, *Jemoy-ut*, the assem-  
 bly of, and *mo-a-cul jemoy-ut*, the great assem-



CHAP. II. bly. And it is probable the Saxons found these words among the ancient British, and that they were in use in the country of the *Defrobani*, prior to the arrival of *Hu* the Mighty with the first settlers.

Tacitus, speaking of the Germans and Gauls, from whom the Britons took their model of government, says, *nec regibus infinita potestas, de minoribus rebus principes consultant, de minoribus omnes*, that is, the representatives of all in council assembled. Hereby distinctly marking the different provinces of the two *gemotes*. The honorable epithet attached to their representatives, proves, that prudence was their most essential qualification. An act or ordinance made in this council, was termed *Gerædnissa*, that is, a wise law, very analogous to the name *witena-gemote*. It is irrelevant to say from whence different nations have taken their laws, and would render this work too voluminous, suffice it, that after the Saxon kings embraced Christianity, on their acceptance of the crown, they, with the people, took an oath to observe the laws.

During the heptarchy, every kingdom had its *witena-gemote*, where laws were made for the use of each; and when such were remarkably wise and good, the rest of the kingdoms received them as general laws. Such were those of Ethelbert, King of Kent. Ina of the West



Saxons, and Offa of the Mercians ; as this mode CHAP. II.  
shortened much the work of legislature ; and  
when Atholwerd became “ *Anglorum rex*  
*potentissimus*,” the other kings of the Heptarchy  
sent some of their wittas to his wittena-gemote,  
when new laws were to be made.

Although the wittena-gemote of the Saxons  
was not reduced to the forms and ceremonies of  
the Norman Parliaments, a name used in this  
country prior to the Norman conquest, having  
been introduced by Edward the Confessor, who  
received the greater part of his education in  
France, yet was there no new law enacted, nor  
old statute altered or abrogated without the  
concurrence of its members. This “ *commune*  
*concilium*” was the effective source, guide and  
controul of the government, without an arro-  
gant and unauthorized assumption of privilege,  
or the refined compliance to the necessity of  
contributing to a ministerial majority ; contrary  
to the assertion of Blackstone in support of his  
opinion on the uncertain origin of our ancient Com. 4 vol.  
P. 403.  
customs. “ That the subdivision of the hep-  
“ tarchy must necessarily have created an in-  
“ finite diversity of laws. On the contrary  
from the mode of legislation, they were few in  
number, simple in their principle, and similar in  
their letter. Derived from the same source in  
Germany, their political maxims and practice  
were without any essential difference. So



CHAP. II. liberty, the inviolable right of man, was unshackled by lawless ambition, and uncorrupted by the insidious sophistry of legal mercenaries. Every individual had an interest in the state, and therefore a right to be concerned in making, amending, or altering its laws. It was his province to guard against the exertion of any human power to destroy the interests of the people, and to watch that no person should be amenable to laws made without his consent, or against which he had never transgressed.

Athelstane, the Saxon king, felt this right inherent in his people when he said, "As I allow, according to your law, what is yours, do ye so with me:" and the great Ina distinguished himself in saying, "There is no great man, or any other in the whole kingdom, who may abolish written laws." But this idea did not originate in him; it is to be found in the ancient Tryads of the Britons. The coronation oath is chiefly of Saxon origin, for their monarchs swore to govern and protect according to the laws of the nation. Such were their ideas of freedom, that one of its fundamental principles was liberty of person. The Saxons seldom imprisoned any one, "*vinculis coercere rarum est.*" Instead of distressing the unfortunate debtor by confinement, the creditor took possession of his goods or lands, according to the valuation of the sheriff; and when every means of payment



failed, the arms of the insolvent were seized as the last resource. No gaol entailed infamy on the wretched, or robbed him of that liberty by which he could subsist himself and family, or recover by economy and industry the losses he had sustained. Distinguishing between crimes and misfortunes, under laws, wise, just, and humane, prisons were erected only for criminals. The liberty of the innocent debtor was preserved without injustice to his creditor. No confinement among felons tainted his morals, prompted to vice, nor by corrupt communication led him by example to commit every species of lawless depredation. So tenacious were the Saxons of personal liberty, that their very kings were its best guardians, unlike the monarchs of modern date, whose judges have deemed truth a libel, and given a criminal interpretation to words, that the writer of an insignificant paragraph might be imprisoned. They were too magnanimous to punish with loss of liberty offences of real magnitude against themselves. It is recorded, to the immortal honor of Alfred, that he committed one of his judges for imprisoning a man who had offended him in this manner. Among the laws of this excellent king is the following passage: "*Qui immerentem Paganum vinculis constrinxerit decem solidis noxam sarcito.*"—Whoever shall constrain, undeservedly, his vassal or bondman with im-



CHAP. II. imprisonment shall repay the damage with ten shillings.

Archaion  
22.

Offa, king of Mercia, is placed among legislators; though there is no code of his laws published by either Lambert or Wilkins in their editions of the Saxon laws; but such were made in his time, and ascribed to him by Alfred, who, when he would compile his code of laws, says, "he inspected the laws of Ina, Offa, and Ethelbert, the first christian Saxon king, who selected the best, and adopted them into his own laws, with the advice and approbation of his council."

Spel. Con.  
tom. i. p.  
309. 313.

Offa held two provincial councils, one at Verulam and one at Colchyth,\* in which latter were Offa and his son, the king of the East Saxons, the king of the West Saxons, the king of Kent, the king of Northumberland, and three kings of Wales, with fifteen bishops and twenty earls."

Ib. tom. i.  
p. 126.

Ann. Dom. 605, Ethelbert, with his queen Berta and his son Eadbald, being confirmed in the christian faith, did celebrate the solemnity of the nativity of the Lord, with the most reverend Bishop Augustine and other great men of the land, having convened at the same time a "*commune concilium*" of both clergy and people, "*tam cleri quam populi.*"

Asser. p. 5.  
West. p.  
167.

Alfred, whose succession to the throne was to him more an object of regret than triumph,

\* Now St. Albans and Colchester.



being elected in preference to his brother's children by the will of his father, a circumstance of much weight with the Anglo-Saxons, as well as by the general wish of the whole nation, on the urgency of public affairs, framed a body of laws, which served as the basis of English jurisprudence, and is deemed the origin of what is denominated the common law. He ever retained the most sacred regard for the *liberties* of the people; and in his will is found this memorable sentiment: "That it is just the English should for ever remain as free as their own thoughts."

Hume,  
vol. i. ch. 2.

Alfred, with the consent of his witas in wittenagemote, made his code of laws that was common to the whole nation, and enacted that a wittenagemote should be held twice a year, and "OFTENER IF NEED WERE."

Alfred's life,  
157. Mirror.  
5—6. Daniel, fol.  
12.

Hence it is a matter of fact, that among the Anglo-Saxons collectively under one government, or in their separate kingdoms, there was a *national council*, called *wittenagemote*, whose consent was requisite for enacting laws, levying taxes, and for ratifying the chief acts of public administration. The preambles to all the laws of Ethelbert, Ina, Alfred, Edward the Elder, Athelstan, Edmund, Edgar, Ethelred, and Edward the Confessor; even those of Canute, though a kind of conqueror, put the matter beyond controversy, and carry proofs every



CHAP. II. where of a limited and legal government. Wilkins thus translates the preface to the laws of Ina:—

“ Ego Ina occiduorum Saxonum rex, cum  
 “ consilio et cum doctrinâ Cenredæ patris mei,  
 “ et Heddæ episcopi mei, et Erkenwoldæ epis-  
 “ copi mei, et *cum omnibus meis senatoribus*  
 “ *et senioribus sapientibus populi mei et multa*  
 “ *etiam societate ministrorum Dei*, consultabam  
 “ de salute animæ nostræ, et de fundamento  
 “ regni nostri, et justæ leges et justa statuta,  
 “ per ditionem nostram stabilita et constituta  
 “ essent, &c.”—“ I, Ina, king of the West  
 “ Saxons, with the advice of Cenrede my father,  
 “ Heddes my bishop, and Erkenwold my bishop,  
 “ with all my senators and oldest and wisest of  
 “ my people, and many of the society of the  
 “ ministers of God, did consult for the health of  
 “ our soul, and for the government of our king-  
 “ dom, and just laws and statutes, were *by our*  
 “ *folk* established and appointed, &c.”—Hence  
 by “ *senioribus, sapientibus populi*,” must be  
 understood the deputies or representatives of  
 the people. The Saxon constitution, there-  
 fore, required not only the presence, but the  
 approbation of the people to enact laws.

In the year 712, Ina assembled a *great* council  
 or parliament, wherein he made ecclesiastical  
 laws concerning marriages, &c. and did other  
 things “ to promote the public peace by his



“ *wittena-gemote*, and with the assent of all the CHAP. II.  
 “ bishops, thanes, and eldersmen, and of all the ~~~~~  
 “ wise old men and PEOPLE of the whole king-  
 “ dom :”—“ ad concordiam publicam promo- Spel. Con.  
 vendam per *commune concilium* et assensum tom. i. p.  
 omnium episcoporum et principium procerum 219.  
 comitum et omnium sapientum seniorum et  
*populorum* totius regni.”

And we find that the grand league and union Bed. Eccl.  
 between the Britons, Saxons, and Picts, was His. lib. i.  
 concluded and confirmed “ per commune con-  
 cilium” et assensum omnium episcoporum pro-  
 cerum, comitum et omnium sapientum seniorum  
 et *populorum*, et per preceptum regis Inæ—  
 by the wittena-gemote, and assent of all the  
 bishops, &c. and of the *people*, and by the  
 precept of King Ina.

In the year 855, Ethelpholf, king of the  
 West Saxons, gave the tythe of his kingdom to  
 the church, in the preamble to this act, “ *cum*  
 “ *consilio episcoporum et principium*, præsen-  
 “ tibus et subscribentibus archiepiscopis et  
 “ episcopis Angliæ, universis nec non et Beor-  
 “ redo R. Merciæ, et Edmundo Estanglorum  
 “ R., abbatum, et abbatissarum, duorum, comi-  
 “ tum, procerumque totius tenæ, aliorumque  
 “ fidelium infinita multitudine, qui omnes re-  
 “ gius chirographum laudaverunt, dignitates  
 “ vero subscripserunt.”—“ With the advice of  
 “ the bishops and chief men, (the archbishops



CHAP. II. “ and bishops of all England being present and  
 “ subscribing thereto, as also Beorred king of  
 “ Mercia, and Edmund king of the East Angles)  
 “ and of the abbots, abbesses, thanes, eldersmen,  
 “ and great men of the kingdom, and an infinite  
 “ number of other faithful *people*, who all ap-  
 “ plauded this act of the king, &c.” The  
 words “ *aliorumque fidelium infinita multitu-  
 dine,*” must, and can imply nothing but an  
 unlimited number of the *community*.

Antiquit.  
 Britanniae,  
 p. 75.

In the year 905, Plegmundus, archbishop  
 of Canterbury, together with King Edward the  
 Elder, “ concilium magnum episcoporum, ab-  
 “ batum, fidelium procerum et *populorum* in  
 “ provincia Gewisorum convocant:”—“ called  
 “ a great council of the bishops, &c. and of the  
 “ *people* in the province of Wessex,” when  
 several laws, both ecclesiastical and civil, were  
 made, and put in force.

The late Sir John Fortescue Aland, one of  
 the justices of the King’s-bench, a man learned  
 in the Saxon language and legal antiquities, in  
 his preface to the book of Chancellor Fortescue,  
 on the difference between an absolute and limited  
 monarchy, says, “ that whoever carefully and  
 “ skilfully reads the Saxon laws, and the pre-  
 “ faces or preambles to them, will find that the  
 “ *commons* of England always, in the Saxon  
 “ times, made a part of that august assembly.”  
 Henry of Huntingdon, concerning the deposi-



tion of Sigebert, King of the West Saxons, has CHAP. II.  
 this remarkable passage:—"Sigebertus rex, in

"principio secundo anni regni, cum incurigibilis

"superbiæ et nequitiae esset, congregati sunt

"proceres et *populus* totius regni, et *provida*

"*deliberatione, et unanimi consensu omnium,*

"*expulsus est a regno.*" Kinewolf vero, juvenis

"egregius, de regnâ stirpe oriundus, *electus*

"*est in regem.*" When King Sigebert, in the

beginning of the second year of his reign, be-

came incorrigible from his pride and wickedness,

the chief men and *people* of the whole kingdom

assembled together, and he was, on due deli-

beration, and with unanimous consent, expelled

the throne. Kinewolf, a noble youth, descended

from the royal stock, *was elected* king. By this

the Saxon people concurred with the nobility

in deposing one King, and electing another, and

this, not in a tumultuous manner, but with a

*parliamentary* deliberation and consent.

Tacitus says, "that in Germany a word

comprehending all the countries, from whence

"the Saxons and Angli originally came, "de

"*minoribus* rebus *principes* consultant de ma-

Tacitus de  
mor. Germ.

"*joribus* omnes; ita tamen, ut ea quoque, quo-

"rum apud *plebem* arbitrium est, apud principes

"putractentur;" small matters are decided by

the chiefs, but in affairs of greater importance it

is necessary that the *people* should be united

with them;" the word *plebem*, importing the



CHAP. II. community: and Cæsar says, “Neque quis-  
 Cæsar.  
 Com. “quam agri modum cutum, aut fines proprios  
 “habet; sed magistratus ac principes *in annos*  
 “*singulos*, gentibus, cognationibusque hominum  
 “qui una coierunt, quantum iis et quo loco  
 “visum est, attribuunt agri, at anno post alio  
 “transire cogant, cujus rei multas afferunt  
 “causas, &c.” neither hath any one a certain  
 field, or proper bundaries; but the magistrates  
 and chief men *in every year* apportion to a tribe  
 of people, who live together, a certain quantity  
 of land, according to their number, and after  
 a year remove them to another place: one of  
 which is, “ut animi equitate *plebem* conti-  
 “neant, quum suis quisque opes cum poten-  
 “tissimis æquari videat;” to content the minds  
 of the people when they see their riches equal  
 to the most powerful. Hence it is not only  
 evident that the *people* at large had their repre-  
 sentation, but that the “*commune concilium*”  
 was held “*in annos singulos* ;” once, at least,  
 in every year.

So high an opinion had the great Lord Lyt-  
 telton, one of our most celebrated historians, of  
 these authorities, that he has not only quoted  
 the major part of them, but adduced much sound  
 reasoning on their basis in his *Life of Henry the*  
*Second*.

Hume,

Guthrum and his army being baptized, on the  
 proposition of Alfred the Great, who became his



CHAP. II.  
 sponsor at the fount, several of the Danes, then in Mercia, were distributed among the five cities of Derby, Leicester, Stamford, Lincoln, and Nottingham, and were from the Danish word "fef," or feve-burghers (the origin of the term fief). A compact was made "between them, and all the witas of England," and "the people which abide in East Anglia, *all gathered together*, with an oath confirmed."

Athelstan made several laws with the consent of his wittena-gemote, which was composed of his optimates and witas, and particularly a wittena-gemote at London, wherein were made "*Judicia civitatis Lundoniæ*" by the advice of the bishops and eldersmen, to which constitutions, *tam comites, quam coloni* swore obedience.

Edmund Ironside deliberated and made his laws by the advice of his *witas* both ecclesiastic and laic

King Edgar ordained his laws with the advice of his *witas* only.

Ethelred and Canute both held their *wittena-gemotes*, and in the reign of the former, a general tax was levied for the purpose of fitting out a fleet to oppose the Danes, by the consent of the *wittena-gemotes*, or parliament. And Canute ordained and confirmed his laws "*cum consilio et decreto archiepiscoporum, episcoporum, abbatum, comitum aliorumque om-*"

Lamb. Sax.  
 Laws, fo.  
 53.

Ingulph.  
 863.

Lamb, fo.  
 58.

ibid. fo. 62.

ibid. fo. 88,  
 97, & 107.

Chart.  
 regis Cnut.  
 Archaion.  
 97. 4 inst.  
 320.



CHAP. II. “*nium fidelium.*” With the advice, and by  
 ~~~~~ the decree of the archbishops, bishops, earls,  
 and of *all other faithful people*, which words
 are of large comprehension.

Ing. Hist.
 488.
 No. 30.
 ibid.
 No. 40.
 ibid.
 489.

Berthulph, King of Mercia, held a “*com-
 mune concilium*” of his kingdom. And thus
 we see that the wittena-gemote, or “*commune
 concilium*” of the Anglo-Saxons and Danes,
 was convened, when emergencies required, until
 the Norman invasion. As to the internal go-
 vernment, laws and regulations of the Danes,
 during their first settlement in Britain, historians
 are silent, but, in after times, they, with their
 customs, &c., were merged in that pure sys-
 tem they found among the Anglo-Saxons, which
 does not appear to have suffered any infringe-
 ment or mutilation, having been handed down
 by their three last Kings, Canute, Harold Hare-
 foot, and Hardicanute, to the time of Edward
 the Confessor, who found them unimpaired,
 and acted upon them in their original purity
 and simplicity; and in all the wittena-gemotes
 held by the preceding kings, we find, on taking
 a cursory view of the laws, that the *people*
 evidently had a share in consenting to them.

Malmes.
 lib. 3. p. 56.

William of Malmesbury thus defines the
 Saxon wittena-gemote:—“*Generalis senatus et
 populi conventus et edictum;*” a general as-
 sembly and ordinance of the senators and *peo-
 ple.*

Sir Henry Spelman describes it, “ Convenire CHAP. II.
regni principes tam episcopi quam *magistratus* Spelm.
Gloss. Tit.
Gemotum
fol. 261.
liberique homines, consulitur de commune salute,
de pace et bello, et de utilitate publicâ promo-
vendâ ;” an assemblage of the chiefs of the king-
dom, bishops as well as *magistrates* and *the free*
men to consult on the common safety, on peace
and war, and to promote the public welfare.

Camden says, “ Quod Saxones olim wittena- Camd. Brit.
in 8vo. im-
press.
1586,
fol. 63.
gemote nos parliamentum, et *Pananglicum*
rectè dici possit, *summamque* ; et sacrosanctam
authoritatem habet in legibus ferendis, confir-
mandis, antiquandis, interpretandis, et in om-
nibus, quæ ad reipublicæ salutem spectant;”
what the Saxons formerly termed wittena-gemote,
we call parliament, and may be justly styled
the *commonwealth of all England*, it possessed
the *inviolable authority* of making, confirming,
repealing, and interpreting the laws, and of all
things which regarded the common weal.

Such was the constitution of the mickle-
gemote during the Saxon heptarchy, till Alfred
ordained the assembling of the people by repre-
sentation, when the term of wittena-gemote
superseded that of mickle-gemote, in all laws,
as more applicable to a select number of repre-
sentatives, and to distinguish it from the latter,
which was still assembled upon very urgent
occasions. As on the junction of the kingdoms
of the heptarchy into one monarchy, the general

CHAP. II. assembly of the people called *mickle-gemote* became too numerous to form a deliberative council on legislative acts; such were reserved for the consultation and deliberation of the *wittena-gemote*. In this state of freedom the law and its administration was so just, that the advocates of oppression and corruption, who compare a state of liberty to anarchy, will find strong reasons against their opinions, in the description of these times from the Chronicon of John of Brompton, “although laws, in times of war, are silent, yet, King Alfred, in the midst of the clashing of arms, made laws, and instituted the centuries, which they call hundreds, and the decennaries, which they call tythings, maintained peace amongst his own subjects, and chastised robbers in such sort, that he commanded golden bracelets to be hung up in the roads divided into four ways, which might brave the avidity of passengers, whilst there were none who durst snatch them away;” and William of Malmesbury says, “his kingdom he likewise divided into shires, hundreds, and tythings, for the better ordering and administering of justice, and for the abandoning of thieves, which had formerly increased, by the means of long warres, whereby, notwithstanding the multitude of soldiers continually employed, it is reported, “that a virgin might “travaile alone, in his days, through all his dominions, without any violence offered; and

“ that bracelets of gold were hanged in the CHAP. II.
 “ high-waies, and no man so hardy as to take
 “ them away.”

And it appears by the preamble to several Saxon laws, “ I Alfred the King, gathered together, and commanded to be written, many laws of our forefathers, which pleased me ; and many of them, which pleased me not, I rejected, *with my wittena-gemote.*” Hence it is apparent, and past all contradiction, that the *people*, in those ages, were an essential part of the *legislative power*, in making, altering, and ordaining laws, by which they and their posterity were to be governed, and that the *law* was then the rule which measured out and limited the *prerogative* of the prince, and the *liberty of the subject*. Bracton, fo. 134.
Coke, 12.
Rep. fo. 65.
Plowden's Comm. fo. 236, 237.

It may at first seem unnecessary to trace our ancient constitution from such remote ages, but as the boasted excellence of our present constitution is the constant theme of partial admiration, it is proper to shew its pristine superiority ; and that its real excellence is but the perverted remains of ancient right.

Among a people of such simplicity of manners as the Anglo-Saxons, the judicial power was always of greater importance than the legislative. And to the free principles of the Saxon government we are indebted for the share and influence the people justly claim in the judicatory power. Trial by jury, the “ palla- Hume.

CHAP. II. dium of British liberty," is of ancient date, and
 ~~~~~ can be traced higher than the reign of Alfred,  
 who, however, confirmed that invaluable right.

Blacks.  
Comm.

Blackstone, in his Commentaries, says, "some authors have endeavoured to trace the origin of juries up as high as the Britons themselves, the first inhabitants of our island; but, certain it is, they were in use among the earliest Saxon colonies, their institution being ascribed, by Bishop Nicholson, to Woden himself, their great legislator and captain."

Hume.

Alfred tempered his government by institutions favorable to the freedom of the citizens: his plan for the administration of justice was popular and liberal. The tything man, or headborough, summoned together his whole decennary to assist him in the decision of any lesser differences which occurred among the members of this small community. In affairs of greater importance, in appeals from the decennary, or in controversies arising between members of different decennaries, the cause was brought before the hundred, which consisted of ten decennaries, or a hundred heads of families of freemen, and which regularly assembled once in three weeks, for the deciding of causes. This mode of decision forms the principles on which the present establishment of juries is founded; an institution admirable in itself, the best calculated for the preservation of liberty, and ad-

Leges Edw.  
cap. 2.



ministration of justice, that ever was devised by CHAP. II.  
the wisdom of man. Twelve householders  
were chosen; who having sworn, together with  
the hundreder, or presiding magistrate of the  
division, to administer impartial justice, pro-  
ceeded to examine the cause submitted to their  
decision.

In the laws of King Ethelred we find this  
passage, "In every hundred let there be a court,  
and let twelve ancient freemen, together with  
the sheriff, (or, according to the Saxon, the  
*Gerefa*,) be "sworn that they will not con-  
demn any person that is innocent, nor acquit  
any one that is guilty."

Thus the trial by jury existed from the most  
remote period of our history, and is coeval with  
the state of civilized society in this island.  
The value of such an institution it is impossible  
correctly to appreciate, and it is to be hoped  
that the people of England, whatever may be  
their suffering, privation, or oppression, will  
never become insensible to this fundamental  
and important position, that it is an imperative  
duty on every individual to maintain, unsullied,  
this bulwark of individual and public liberty.



## CHAPTER III.

*On the Ancient Constitutional English Polity—more particularly of the Great Annual Court of the People, called the View of Frankpledge—its divisions of Tithings, Hundreds, &c.*

CHAP. III.

Lamb.  
Archaion.Gran.  
Sharp.

Hume.

THE first division of England into hundreds and tithings has been ascribed to the virtuous and patriotic King Alfred: as best adapted to the most *pure state* of liberty of which human nature is capable, and competent to fulfil all the necessary purposes of mutual defence, the due execution of all just and equal laws, and the sure maintenance of the public peace. Alfred, to render the execution of justice strict and regular, divided all England into counties, these being subdivided into hundreds, and hundreds into tithings. Every householder was answerable for the conduct of his family, and even of his guests, residing above three days in his house. Ten neighbouring householders, in the Saxon language, "*borseholders*," were formed into one body, who, under the name of a tithing, decennary or firbourg, were responsible for each others conduct; and over



whom one person, called a tithing man, or headbourg, they appointed to preside. Every man was punished as an outlaw who did not register himself in some tithing. And no man could change his habitation without a warrant or certificate from the chief of the tithing to which he formerly belonged. Every man was obliged for his peculiar interest to keep a watchful eye over the conduct of his neighbours, and was surety for the behaviour of those he placed under the division to which he belonged. Hence these decennaries received the name of frankpledge. CHAP. III.

This mode of national defence, by free and popular societies of citizens, is called, in the laws of Edward the Confessor, “ Summa et  
 “ maxima securitas,” “ *the chief and greatest*  
 “ *security by which all men are sustained in*  
 “ *the firmest state, viz. that every one should*  
 “ *establish himself under the security of a*  
 “ *covenant*, which the English call freeborhges.  
 “ (*i. e.* free pledges,) but the Yorkshiremen  
 “ alone call tienmannatala, which signifies the  
 “ number of ten men. This security was con-  
 “ stituted in the following manner; That ALL  
 “ PERSONS of all the towns of the whole king-  
 “ dom ought to be under a *decenal suretyship*;  
 “ so that if *one of the ten should* FORFEIT—  
 “ (*viz.* forfeit his *free pledge*, that is, his credit  
 “ in the estimation of his neighbours,) the

Leges St.  
Edward,  
cap. 20,  
de Fri-  
borgis.



CHAP. III. “ nine should have him to” (trial of) “ right,  
“ *but, if he should abscond, a term of law of*  
“ *thirty-one days should be allowed him ; being*  
“ *sought in the meanwhile and found, he should*  
“ *be brought to the King’s judgment ;*” (that  
is, judgment of justice in the King’s courts,)  
“ *and, there out of his own*” (property) “ *should*  
“ *make good whatever damage he had done.*  
“ *And if to this he had forfeited*” (or failed,)  
“ justice should be done of his body. But if  
“ within the aforesaid term he could not be  
“ found, the chief or head, for in every free-  
“ borough, (or tithing,) there was *one chief*  
“ *whom they called Freeborough Head,*” (Fre-  
oberger Heofod, i. e. headborough, or tithing-  
man,) “ *should take two of the better sort of*  
“ *people of his freeborough, and also, out of*  
“ *three nearest freeboroughs, he should take*  
“ *one chief, and two of the better sort of people*  
“ *if he can have them, and so the twelve being*  
“ convened he shall clear himself and his free-  
“ borough (if he can do it,) of the forfeiture  
“ and *flight of the said malefactor, which, if*  
“ *he could not do, he, with his freeborough,*  
“ *shall restore the loss out of the property of*  
“ *the malefactor as long as any should remain,*  
“ *failing which he should complete*” (the resti-  
tution) “ *out of his own and that of his free-*  
“ *borough, and should satisfy justice according*  
“ *to what should be to them lawfully adjudged,*



“ &c.” Thus, the inhabitants of each free-  
borough became responsible for all damages  
and depredations committed within their re-  
spective districts; and they were stimulated  
by their private interest to “*associate in arms*  
“ for the suppression of acts of unjust violence,  
“ and for the maintenance of public peace.”

These ancient freeboroughs or tithings are  
sometimes mentioned as consisting of only  
TEN MEN; at other times of “*ten men and*  
“*their families.*” “*They be commonly named,*  
“ TITHINGS, because they contain (as I told  
“ you,) the number of TENNE MEN WITH  
“ THEIR FAMILIES.” And Lord Coke says,  
“*This frankpledge consisted most commonly*  
“*of ten households, &c.*” Therefore as all  
males, from fifteen to sixty years of age, are  
required by law “*to have arms, and to be*  
“*exercised therein;*” the number of males in  
a *tithing* of the latter description would amount  
to about thirty, on the average of three males  
to a family.

The arrangement of the people into these  
*decenary* associations was not only “*ordained*  
“*by the ancient laws of the realm,*” and re-  
quired by the *common law* of the whole king-  
dom; but mention is made of the formation of  
such, as being *the free act of the people them-*  
*selves* in every neighbourhood, for, according  
to Lambard, the ancient usage was, that “*all*  
Lambard  
Duties of  
Constables,  
p. 7.

CHAP. III.

Lamb.  
Duties of  
Constables,  
p. 7.2 Inst. p.  
73.



CHAP. III. “*free borne men shoulde CAST THEMSELVES*  
 “*into several companies by tenne in eche com-*  
 “*panie,*” &c. and this was ordained “*for the*  
 “*more sure keeping of the peace, and for the*  
 “*better depressing of thieves and robbers.*”

Granv.  
Sharp.

The *ten* householders or heads of families, from whose precise number the numerical appellation of *decenaries*, *tithings*, and *dozeins*, are evidently derived, were respectively distinguished by the title of *deciners* from the others who were included and respectively *pledged* by the *householders* in the several *decenaries*. These *deciners* were answerable for the payment of all burthens whether *national*, *provincial*, or *parochial*. They were the only men who held *judicial capacities*, and were called together by the chief *freeborg*, or headborough, to consult and determine on every matter of importance within the extent of their division. On such occasions the headborough officiated as *judge*. And that this was their jurisdiction and office within their *tithing*, we have from the laws of Edward the Confessor, wherein they are described as “*jus-*  
 “*ticiarii,*” justices.

Vide Lambard on the word centuria.

The *nine* persons of the tithing were named “*FREOBORH,*” that is *free-sureties*, (or *frank-pledges*,) and the *tenth* man was called *theothungmon*, that is “*decurio,*” (or tithingman,) others called him *tienheofod* (*head of ten,*)



and others again freoborhes-heofod, (free bur-  
 gess head,) or “chief pledge.”

CHAP. III.

In comparing these terms with those men-  
 tioned in the Saxon laws, collected by Edward  
 the Confessor, and the relation they bear to  
 each other, we may justly conclude that the  
 “*Justituarios super quosque decem friborgos*”  
 therein mentioned, were no other than tithing-  
 men, the heads, or chiefs, of each decenary,  
 called “decani,” or deans; and the “decem  
 “friborgos” were the *ten householders* or  
 deceners of each tithing, each of whom, Lam-  
 bard calls “freoborh,” or free burgess.

Laws of St.  
Edw. No.  
20. c. 30.Leges St.  
Edw. de  
centurioni-  
bus et capi-  
talibus Fri-  
borgis.

This being understood, we may now treat of  
 the authority of the *tithingmen* in their respec-  
 tive divisions. These tried causes among the  
 villagers and neighbours, and settled matters  
 of litigation of no great importance, but when  
 greater causes occurred, they were referred to  
 their superior justiciaries, “as the wise men  
 “(or wittena-gemote,) had enacted, that is,  
 “over ten deans or chiefs of tens, whom we  
 “may call centurions or centenarii, (hun-  
 “dreders,) because they had jurisdiction over  
 “a HUNDRED FRIBORGS (that is, a hundred  
 “free burgesses or *deciners*).”

Granville  
Sharp.

Hence the hundreders or high constables  
 were also *justiciaries*, so that every *hundred*  
*householders* throughout the kingdom had a  
 complete establishment of civil officers; a *high*



CHAP. III. *constable* and ten *tithingmen*, all of whom were justiciaries within their respective jurisdictions, to preserve the peace, and to adjust differences arising amongst themselves and their neighbours. Though these officiated as *judges* in their respective courts, still was their power duly limited by the opinion and determination of the *householders*, or deciners, from whom the juries, the real judges of the causes were regularly chosen.

Leges Edw.  
cap. 27.

Vide Lam-  
bard  
Leges Edw.  
c. 16. 50.

But the law concerning *decennaries* or tithings was not only made for the common sort of people but the chief nobility and the bishops themselves were subject to it, as appears by that law of Edward the Confessor, confirmed by William the First, whereby all bishops, earls, and barons, and all those that had courts of Sac, Soc, and Rheam, &c., swore to keep their knights, and all other servants there mentioned in their frithborg or frankpledge, for whom these lords were to be sureties. And by the laws of Canute, everythane or gentleman of estate was to have his family under his own pledge, and if any of them were accused, he was to answer for him in the hundred court, and compel him to appear. And he was to be responsible for him if he escaped, so that all the privilege the nobles had above common men, were, they were not bound for one another, so as to be part of any decenary or tithing, but each of them was head



of his own friborg, and his family was, as it were, CHAP. III.  
a distinct family of itself. 

However severe this law might be, it did not bear partially on the common people—for all were equally subject to it, it was neither introduced or increased by the Norman conquest, since the Normans, as well as the English were under the same law.

The law of the tithings were these—*First*, That if any one offended and failed to appear, the other sureties were bound to have him forth coming to justice.—*Secondly*, But if the guilty party fled, he should not be any where received without a testimonial from the tithing from whence he came; so that a man being out of any tithing, if he were received in any town, the whole town was in the king's mercy. But by the law of Edward, the decenary was allowed one and thirty days to bring the offender to justice, that he might make satisfaction either by his goods or body. *Thirdly*—If he could not be found, then the tithingman, or basholder, taking with him two of the best of his own *friburgh*, and nine of the three neighbouring friburghs, and then before the king's justice to free himself by oath of the offence and flight of the criminal, which if he could not do, he, with his own *friburgh*, was to make good the loss out of the goods of the party, and if insufficient, out of his own and those of his *friburgh*. C. 20.



CHAP. III. *Lastly*—If the neighbouring friburghs would not be their compurgators, then they were to swear for themselves, that they were in no wise guilty, and that as soon as they could find him, they would bring the offender to justice, or else discover where he was.

The hundred court was called in Saxon, hundred gemote, because it had jurisdiction over ten *decenaries* or a hundred *friburghs*. This court, before the conquest, was held twelve times a year, and afterwards was increased by Henry the First to once a fortnight, and then, by Henry the Third, limited to once in three weeks.

Dugdale ut  
supra.

The third of these courts was that of the trything which was the territorial subdivision in each county, and has by some writers been confounded with the tything courts, whereas they consisted of a great number of tythings, and several hundreds, and were in Kent called lathes, in Sussex rapes, and in Yorkshire wapentakes. And these divisions of counties are extant under these denominations at this day. The trything court was superior to that of the hundred, and was the osiqui of the present quarter-sessions of the peace. In this court, the constables of the respective hundreds sat as magistrates, and the baron, who was the elected chief of the district, a trything, always presided.



The fourth, and last of these courts, was the county court, held every month by the elder-  
 man, or in his absence by the sheriff. There  
 were anciently appeals made from the hundred  
 court to the county court, as appear from the  
 laws of Canute. “No man by a distress shall  
 “compel another to the county court, unless  
 “he hath thrice complained in the hundred  
 “court; but if he hath not right the third  
 “time, he may then sue in the county court,”  
 which is called the scyre-gemote.

In each of these courts, causes were deter-  
 mined, and offences tried, by juries of the vici-  
 nage. In larger cities and towns the same  
 jurisprudence prevailed, and the chief magis-  
 trate is still called the elderman, or alderman at  
 St. Edmunds Bury, Grantham, Malmesbury,  
 and many other places at the present time.  
 Justice was administered, as it were, at every  
 man's door, and “in these decisions of the  
 “people, peace and right were maintained, and  
 “differences among neighbours adjusted, *with-*  
 “*out expense*, whereby tedious and vexatious  
 “law-suits were happily avoided.”

Sir Edward  
 Coke.

The people experienced all the advantages of  
 a pure legislation arising from an equal repre-  
 sentation in the Saxon parliaments. The sim-  
 plicity of our ancient constitution disseminating  
 equal rights and laws, and securing universal  
 protection without those ruinous expences to



CHAP. III. individuals which have been introduced into our modern courts of law ; and the more dangerous innovation of corruption, which has introduced itself with the rotten system of borough representation.

Ingulf. p.  
870.

The county court consisted of the householders, who possessed an equal vote in the election of all officers, and from amongst whom juries were empannelled. It was held twice a year, after Michaelmas and Easter, in which the bishop presided together with the alderman, and its object was the receiving of appeals from the hundreds and decenaries, and determining controversies between men of different hundreds. Formerly, the alderman possessed both the civil and military authority ; Alfred, sensible that this conjunction of power, rendered the nobility dangerous and independent, appointed a sheriff in each county, who enjoyed a co-ordinate authority with the former in the judicial capacity. There was an appeal, in default of justice, from these courts to the king himself in council, and the people aware of the equity and wisdom of Alfred, placed their whole confidence in him.

The title "*decinei*," brings into consideration the word "*denizen*," which Lord Coke imagines to be derived from "*deins né*," born within, and also from "*donerison*," "because the freedom "is given by the king." Another learned writer (Davies) however, asserts, that denizen



is a British law term which the Saxons and  
 Angles found here and retained. A dinizen is  
 taken for an alien born, that is, enfranchised and  
*denizated* by letters patent; and being admitted  
 to the privileges and franchises of Englishmen,  
 the denizens became the king's liege subjects,  
 and were of course denziated or admitted to be  
 members of some decenary, and sworn to their  
 "legeance" in common with other subjects in  
 the court of "*frankpledge*;" and if the *deni-*  
*zated* stranger rented a house, and contributed  
 to the duties of "watch and ward" (now deno-  
 minated scot and lot) and other rates, he became  
 a *friobork*, a freeburgess, having a right to vote  
 for representatives in the *national council*.  
 Lord Coke uses the terms *infranchised* and  
*denizatees* as synonymous, for, "*the renting of a*  
*house at a certain rent by the year,*" is the  
 ancient legal description of *burgage-tenure*. *It*  
*is called burgh,* (says Sir Edward Coke) *because*  
*it sendeth burgesses to parliament.*" And this  
 is certainly the *usage* of *boroughs* as well as the  
*right of all burgesses*.

It is demonstrated by no less an authority than  
 Sir Edward Coke, that the term *burgage* holder  
 applied to *every housekeeper* in the kingdom who  
 as such was entitled to *vote for his representative*  
 in parliament: how this *right* has become con-  
 fined to the proprietors of certain tenements or  
 small patches of land in rotten boroughs, as at

CHAP. III.  
 ~~~~~  
 Coke's Inst.
 lib. 2. p.
 129.

CHAP. III. present with Old Sarum, and other boroughs of the like description, is only for corruption itself to determine. For their ancient indisputable right of *sending burgesses to parliament*, proves their *freedom* as members of the community. Hence in the borough of Southwark and several others to this day, the *renters of tenements and housekeepers in general* are the electors; and in Westminster and other ancient cities, the same right, by *burgage tenure*, of voting for representatives, still prevails, because all *cities* were originally deemed *boroughs*, as being the habitation of *free borges*, or *free pledges*; the associated housekeepers, who are mutually *pledged* to maintain the public peace, and defend and support the due execution of the laws. If this *original right* of voting were fully restored, and vested in all *householders*, or *heads of families*, who principally defray the exigencies of the state; even if the franchise descended no farther, it would be amply sufficient to destroy the present detestable corruption in the representation, or more properly, *mock representation* of the commons, and restore the ancient lustre of parliament. For then the numbers of *deciners* or householders in each county would be regularly known, and the advantage of the regularity of numbers would greatly facilitate the much to be desired and *more equal* representation of the people, if all *deciners* in

Coke,
1 Inst.
lib. 2,
cap. 10,
sect. 164.

Gran.
Sharpe.

each county were allowed to vote, as they should CHAP. III.
by constitutional right ; for the junction of ten
equal hundreds, composed of their deciners,
associated, would form a proportionate division
of a county, regular in numerical arrangement
both of officers and other deciners, and would
consequently facilitate the *routine* of public
business. *Two* such divisions would be suffi-
cient to send *one deputy* to the *national council*.
Hence the present number of representatives
would be lessened, and an *equal representation*
of all the families in the kingdom obtained.
So would order be preserved, and no person be
allowed to vote but those who did actually re-
side in the place or county where the election
is made, according to an ancient rule of the
constitution, that election shall take place in
every county by men dwelling and residing in
the same county (in eodem comitatu commer-
centes et residentes) ; and also by an act of par-
liament still in force, of 1 Hen. V., c. 1. It is,
therefore, an act of gross corruption, and re-
pugnant to the principle of our ancient consti-
tution, to bear the travelling expenses of voters
who dwell in distant places ; such ought not to
be suffered to vote at all, except on the spot
where they reside ; by which not only much
expence would be saved to the candidates, but
breaches of the public peace prevented.

The number of houses in Great Britain being,

CHAP. III. according to the house tax, twelve hundred
~~~~ thousand, let these be divided into their ancient  
assemblies of ten, to be denominated after their  
original term of tythings ; each electing annually  
their conservator of the peace, or tythingman.  
Let ten of these tithings form the hundred court,  
agreeable to ancient usage, and elect annually  
their constable of the hundred, Ten of these  
hundreds, again, should form the court of the  
thousand, and elect annually their elderman or  
magistrate, and two thousand should form the  
elective number to choose a representative for  
the parliament. This mode would insure a  
system of representation perfectly fair and equal,  
founded on the ancient practical constitution  
of the country, and might be effected in the  
following regular progression :—

1,200,000 housekeepers would elect

120,000 tithing men

12,000 constables

1,200 magistrates

600 representatives.

Should the plan for universal suffrage be  
adopted, the same system would be equally  
practicable, though on a more extended basis.

The objection made by the opponents of re-  
form, and those interested in the abuses existing  
under the present form of representation, on the  
ground of impracticability, are fully refuted by  
the *actual existence* of this system for so many



centuries, till it was overturned by Norman CHAP. III.  
violence. To correct the abuses of our consti-  
tution, and restore its ancient purity and splen-  
dor, we need only advert to its original princi-  
ples; especially as certain towns\* return their  
members to parliament from this ancient and  
prescriptible right, which the corruption of  
succeeding times has neither been able to obli-  
terate or alienate.

To perpetuate the continuance of the decen-  
aries, the law established an annual court,  
called THE VIEW OF FRANKPLEDGE, wherein  
the association and due arrangement of the  
whole body of the people, in their proper *dece-*  
*nal* divisions, were renewed and completed;  
one of the constant articles of inquiry being,  
“whether the *decenaries* were complete.”

“Et fiant visus de Francoplegio sic quod pax Heta, lib. 2,  
c. 52.  
“inviolabiter observetur, et quod DECENÆ  
“INTEGRÆ SINT, sicut tempore Henrici regis  
“prædicti esse consueverunt.” “And views  
of frankpledge were made for the strict ob-  
servance of peace, and that the *decenaries*  
should be filled up, as was usual in the time of  
King Henry.”

Heta, in the chapter from whence the forego-  
ing sentence is taken, expressly quotes *Magna*

\* Lewes, Southwark, &c.



CHAP. III. *Charta*, and gives a transcript of the 35th chapter, with very little variation, except what was necessary for explaining the common printed copies of that noble charter. It expressly enacts the continuance of the tithings entire, according to their original design, and statute, as well as common law, authorise the re-establishment of the tithings throughout the whole realm, without any new law being necessary for that purpose. It is already the law of the land, confirmed also, by subsequent statute. Sheriffs and other magistrates, who do not give it due force by holding the annual "view of frankpledge," for the purpose of maintaining the tithings entire, are guilty of neglecting the most essential part of their duty, and ought to be amerced by the crown, as human wisdom has never framed a law, in which the interests of the prince and people have been more intimately connected and involved. And the greater should be the fine in case of lawless depredation, notorious robberies and riots occurring within their jurisdiction, which would have been prevented had they performed this necessary part of their duty in completing the tithings in an annual view of frankpledge, as the law directs.

See the whole chapter concerning the view of frankpledge as inserted in the common statute books.  
9 H. V.  
c. 35.

Lambard  
Dut. Const.  
p. 7, c. 8.

Lambard, in his "Duties of Constables," after mentioning the cause of associating in tithings or decenaries for the sake of more fully



explaining the nature of pledges, as well as their association in tithings and hundred courts, adds, CHAP. III.

“ These companies be yet in some places in  
 “ England, (and, namely, with us in Kent), called  
 “ *BOROES*, of the said word *BORHES*, *pledges* or  
 “ *suretie*: albeite, in the westerne partes of the  
 “ realme, they be commonly named *tythings*,  
 “ because they containe (as I told you) the  
 “ number of *TENNE MEN* with their families.  
 “ And even as tenne times tenne doe make an  
 “ *HUNDRED*, so, because it was also then *ap-  
 “ pointed that TENNE OF THESE COMPANIES*  
 “ should at certain times” (every three weeks)  
 “ meete together for their matters of greater  
 “ weight, therefore that generall assemblie (or  
 “ court) was (and yet is) called a *HUNDRED*.  
 “ Furthermore, it was then also ordained that  
 “ if any man was of evil credit, that he could  
 “ not get himselfe to be received into one of  
 “ these *tythings* or *boroes*, that then he should  
 “ be *shut up in prison* as a man *unworthie to live*  
 “ *at liberty* amongst men abroad.”

See  
 Prynne's  
 Brief Ani-  
 mad.  
 p. 180.

cap. 1.  
 sect. 17.

The view of frankpledge is fully described in  
 “ *Horne's Mirrour*,” “ *De Viewes de Franck-  
 pledge*,” and also in Dr. Cowell's “ *Interpre-  
 ter*,” by whom its ancient importance is repre-  
 sented as that of a *COUNTY PARLIAMENT*, or  
 grand inquest, competent for all business relat-  
 ing to bridges, turnpikes, regulations of com-



CHAP. III. mons, jails, workhouses, public abuses, and private wrongs, within each county respectively. The military duty of watch and ward throughout the kingdom was also regulated in this court, by which the nation was guarded against internal violence, and foreign invasion; and the enormous expence, and *unconstitutional* establishment of a standing army, the most dangerous of all our modern innovations, rendered unnecessary.



## CHAPTER IV.

*Representation in the time of the Saxons and Danes continued.*

ON examining into the original customs of CHAP. IV.  
the ancient Germans, and the records of Saxon  
legislature, we find it incontrovertibly proved,  
that the consent of all the members of the *community* was requisite in every important deli-  
beration. When the Saxons made their first Lyttl. vol.  
3. p. 217.  
settlement in any foreign country, and while  
their numbers was moderate, this right might  
be exercised without any inconvenience by the  
people assembling on the open plains. And  
that this was the case, we are assured by  
Matthew of Westminster, “ that the meadow Matt.  
Westmon.  
sub anno  
1213.  
15 Johan.  
“ was Staines, in which the great charter was  
“ granted by King John, had the name of  
“ *Runemeed*, which in the Saxon language,  
“ signified the *field of counsel, because in an-*  
“ *cient times it had been usual to consult there,*  
“ *upon business which concerned the peace of*  
“ *the kingdom.*” We may, therefore, con-  
clude that, from the time of Edward the Con-  
fessor till the reign of King John, with the



CHAP. IV. exception of the representative parliament in the fourth year of William the First, no representatives had been sent to serve in parliament, but that the greater barons as well as all the inferior tenants of the crown, even so late as the 15th of King John, were accustomed to attend the great councils of the nation in their own persons; and it would appear, that in conformity to the ancient German custom, so far as was practicable when the assemblies of the nation were no longer convened in open plains, none of the inferior orders of freemen, residing in or near the place where the parliament met, were excluded from attending it *in their own persons*, the number of them being only limited by the capaciousness of the building or place in which they assembled.

Lyttl. vol. 3,  
p. 218.

Lyttl. vol. 3,  
p. 230.

The presence of the *people* in the Saxon councils, and their having had a share in the highest acts of legislature, is asserted by the evidence of the best historians of those times. This was established on *the principles* of the ancient constitution, and on the foundation of *indisputable* original rights.— And that this privilege of the people was well understood in later times; we find that in the second year of the reign of Henry the Fifth, the house of commons asserted in their petition to the King, “ that it *hath ever been their liberty and freedom* that there should be no statute or law



"made without their assent, and that they are, CHAP. IV.

"and ever have been, a member of the parlia-

"ment," which claim was not disallowed <sup>Ibid, p. 232.</sup> either by the lords or the King.

The most ancient of our law books now extant is ascribed to Glanville; but many ages before, collections had been made of the Anglo-Saxon laws, by some of the kings of that nation. It has been already mentioned, that Alfred with the advice of his *wise council*, (wittena-gemote,) consigned to writing many ancient customs which he approved, and rejecting or altering them he disapproved. His son, King Edward the Elder, begins his laws with a command to his judges or magistrates, "that they should give just judgments according to the laws, as contained in their *Dombec*." This is called both by Spelman and Wilkins, in their Latin translation *liber judicialis*, and is supposed to be the collection spoken of by Alfred, as no mention is made of it before the time of that monarch. It retained its authority till after the reign of Edgar, who, in one of his statutes, declares and ordains that every man, whether poor or rich, shall enjoy the benefit of the *common law*. He granted a liberty to the Danes, who were subject to him in England, of choosing what form of law they liked best; but commands the English to observe "what

Vide Leges  
Ead. Wil-  
kins, p. 48.



CHAP. IV. “ he and his *wise men* had added to the most  
 “ *ancient* laws of the realm.”

Lambard  
 de priscis  
 Anglor. Le-  
 gibus, cap.  
 8, fol. 139.

Lyttd. vol.  
 3, p. 213.

Ibid, p. 213  
 214.

After a lapse of sixty-seven years from the death of Edgar, Edward the Confessor confirmed not only the common law, but made a new compilation, selected from all the laws, Mercian, Danish, and West Saxon, which had prevailed in all the different parts of the kingdom, uniting them into one by the advice of his wittena-gemote, or parliament. And the charter of Henry the First says, “ I restore to you the laws of King Edward with those emendations, that my father made therein by the advice of his barons.” Whatever, therefore, was not altered in *that law* by his father, stands confirmed by this clause ; and that law was the whole body of the Saxon laws and customs which had been established under the government of Edward the Confessor. The charter of King Stephen expressly confirms “ *all good laws and customs,*” (that is, the unwritten and written or statute laws,) “ *the nation had enjoyed in the time of Edward the Confessor.*” Henry the Second confirmed that of his grandfather ; so that from the reign of King Edgar to the first of the Plantagenets, exclusively, the *common law* has received repeated sanctions, and been delivered down as the great birthright and inheritance of the nation.



It appears evident from these premises, that CHAP. IV. the Kings summoned a general assembly of the <sup>Ibid.</sup> *people* to make laws and other matters of great consequence. The numbers composing the wittena-gemote were much greater than that of our present parliament. They met at various places, and, as has been observed, in open fields; the meeting was held at Christmas, Easter, and Whitsuntide, and the business was generally completed in one day. The King had beside, two other councils, one composed of his eldersmen and bishops, the other of his intimate friends, who met whenever the King thought proper, their business being to advise him only in the executive part, without presuming to make laws. In the legislative assemblies the *people* constituted the greatest part; and although the King was generally present, and might give his objections, yet his negative appears not to have been attended to; he and every other magistrate being bound to execute the duties of the wittena-gemote.

The mickle-gemote has been described as the great council or assemblage of the people, to which we have referred on the preceding authorities, but the wittena-gemote was certainly a *representative* council or parliament, delegated by the people, as appears by the petitions from the boroughs of St. Albans and Barnstaple, in the reigns of Edward the Second



CHAP. IV. and Edward the Third, the proceedings upon which sufficiently decide on this important and ancient right of sending citizens and burgesses to the wittena-gemote, "*commune concilium*," or parliament, and from towns that were held under subjects not immediately of the Crown.

V. Madox's  
Hist. of the  
Exchequer,  
c. 17. p.  
21.

The claim of the town of St. Albans here mentioned, is transcribed by Mr. Madox, in his history of the Exchequer, from the parliament rolls of the eighth year of Edward the Second as follows :

“ Ad petitionem burgensium villæ de St.  
“ Albano suggerentium rege, quod licet ipsi  
“ teneant villam prædictam de rege in capite,  
“ et ipsi, sicut cæteri burgenses regni, ad par-  
“ liamenta regis, cum ea summoniri contigerit,  
“ per duos comburgenses suos venire debeant,  
“ *prout totis retroactis temporibus venire con-*  
“ *sueverunt*, pro omni modis servitiis regi faci-  
“ endis ; quæ quidem servitia iidem burgenses  
“ et antecessores sui burgenses villæ prædictæ,  
“ tam tempore domini Edwardi super regis An-  
“ gliaë, patris regis, *et progenitorum suorum*,  
“ quam tempore regis nunc, semper ante in-  
“ stans parliamentum, ut præmittitur, præsti-  
“ terunt. Nomina quorum burgensium sic pro  
“ dictâ villâ ad parlamenta regis venientium  
“ in rotulis cancellariæ semper irrotulata fue-  
“ runt. Nihilominus vicecomes regis comita-



“ tûs Hertfordiæ, ad procuracionem et favorem  
“ abbatis de sancto Albano et ejus consilium,  
“ burgenses prædictos præmunire, seu nomina  
“ eorum, prout ad ipsum pertinuit, retornare,  
“ ut ipsi servitium suum prædictum facere  
“ possent, penitus recusavit, in contemptum  
“ regis et burgensium prædictorum præjudi-  
“ cium, et exhæredationis periculum manifes-  
“ tum, super quo petunt remedium opportu-  
“ num.”

R. est per consil.

“ Scrutentur rotuli, &c. de canc. si tempo-  
“ ribus *progenitorum regis* burgenses prædicto  
“ solebant venire, vel non ; et tunc fiat eis super  
“ hoc justitia, vocatis evocandus si necesse  
“ fuerit.”

“ Upon the petition of the burgesses of the  
“ town of St. Albans, suggesting to the king,  
“ that although they hold the town aforesaid of  
“ the king in capite, and they, as other bur-  
“ gesses of the kingdom, ought to come to the  
“ king’s parliaments, when they should happen  
“ to be summoned, by two of their fellow-  
“ burgesses, *as they were accustomed to do in*  
“ *all past times*, for the performance of all ser-  
“ vices to the king ; which services the same  
“ burgesses and their predecessors, burgesses of  
“ the said town, have performed, as is before  
“ declared, as well in the time of Edward



CHAP. IV. “ late king of England, father of the king  
 “ and his progenitors, as in the time of the  
 “ now king, always before the present par-  
 “ liament. The names of which burgesses for  
 “ the said town so coming to the parliaments of  
 “ the king were always enrolled in the rolls  
 “ of chancery. Nevertheless, the sheriff of  
 “ the county of Hertford, by the procurement  
 “ and favor of the abbot of St. Albans, and by  
 “ his advice, refused to warn the said burgesses,  
 “ or return their names according to his duty,  
 “ that they might do the service aforesaid, in  
 “ contempt of the king, and prejudice of the  
 “ burgesses aforesaid, and manifest danger of  
 “ disuniting them, for which they beg an op-  
 “ portune remedy.”

It was answered by the council,

“ Let the rolls of chancery be searched, &c.  
 “ if in the time of the king’s *progenitors* the  
 “ aforesaid burgesses were wont to come or not,  
 “ then let justice be done in this matter, and  
 “ such as have been called may be called, if it  
 “ should be necessary.”

V. Brady,  
 Petit, Tyr-  
 rel, et alios.

As many disputes have arisen about our an-  
 cient constitution, the matter of this record is  
 of extreme importance, for it proves that repre-  
 sentatives had been sent to parliament from the  
 borough of St. Albans from the time of the  
 father of King Edward the Second *and his pro-*



*genitors*; and these last words fully demonstrate CHAP. IV.  
that the right of representation existed antecedent to that reign.

But this *right* of representation is proved to be of more ancient date from the petition in parliament to King Edward the Third from the town of Barnstaple in Devonshire, which sets forth, that “amongst other privileges granted “to them by a charter of King Athelstan, they “had *from that time* enjoyed the right of “sending two burgesses to serve for them in “parliament.” And, in order that they may be clearly understood, an extract from the writ of requisition founded on that petition, which is therein recited, is here given :

“Sciatis, quod cum nuper ad prosecutionem  
“burgensium villæ de Barnstaple, in com. De-  
“von. per petitionem suam *coram nobis et con-*  
“*cilio nostro exhibitam* nobis supplicantium,  
“*ut cum villa prædicta, à tempore cujus con-*  
“*trarii memoria non existit, liber (burgus*  
“*fuerit, iidemque burgenses, et eorum ante-*  
“*cessores, burgenses villæ predictæ diversis li-*  
“*bertatibus et liberis consuetudinibus, per car-*  
“*tam celebris memoriæ D. Athelstani, dudum*  
“*regis Angliæ, progenitores nostri, quæ ad*  
“*liberum burgum pertinent, à tempore confec-*  
“*tionis dictæ cartæ usi fuerunt et gavisi, in*  
“hoc, viz. quod tenementa sua in eodem burgo  
“in testamenta suo in ultimâ voluntate suâ

Lord Lyt-  
telton, vol.  
iii. p. 413.

Vide Es-  
cheat Bun-  
dle 18. Ed.  
III. dated  
June 23,  
regn. 14.  
n. 14.



CHAP. IV. “ quibuscunque voluerint legare, et majorem  
 “ de se ipsis, coram quo omnia placita dictum  
 “ burgum et superbium ejusdem tangentia pla-  
 “ citari et terminari debeant, eligere, *ac ad sin-*  
 “ *gula parlamenta nostra, et dictorum ante-*  
 “ *cessorum nostrorum, duos burgenses pro com-*  
 “ *munitate ejusdem burgi mittere, nec non in*  
 “ *singulis taxationibus, &c. consueverunt.*”

“ Know ye, that lately, on the prosecution  
 “ of the burgesses of Barnstaple, in the county  
 “ of Devon, by their petition exhibited *before*  
 “ *us and our council, praying us, that the said*  
 “ *town has been, from time immemorial, a free*  
 “ *borough, and that the said burgesses, and*  
 “ *their predecessors, burgesses of the said town,*  
 “ *have used and enjoyed divers privileges and*  
 “ *customs, by a charter of Athelstan, long*  
 “ *since king of England, our progenitor, what*  
 “ *appertains to a free borough, from the time*  
 “ *of granting the said charter, in this wise,*  
 “ (viz.) that they were accustomed to bequeath  
 “ their tenements by their last will and testa-  
 “ ment to whomsoever they chose, and to elect  
 “ an elderman from amongst themselves, before  
 “ whom all pleas relative to the said borough  
 “ and its privileges should be pleaded and de-  
 “ cided, *and to send to each and every of our*  
 “ *parliaments, and those of our progenitors,*  
 “ *two burgesses to represent the community of*  
 “ *the said borough, also in all tillage, &c. &c.*”



The king, in consequence of this appeal, CHAP. IV.  
 ordered an inquest to be made into the truth  
 of the facts therein alleged, and particularly  
 “*si carta illa fuerit amissa,*” — “if the charter  
 had been lost,” — as the petitioners set forth, and  
 whether it would be proper to grant them an-  
 other, confirming to them the same rights and  
 privileges, as they had claimed.

In the return to this the jurors say—“*Bur-*  
 “*genses dictæ villæ ad singula parliamenta duos*  
 “*burgenses pro communitate dicti burgi mittere*  
 “*solebant; item dicunt, quod nihil eis con-*  
 “*stabat de cartâ D. Athelstani, dudum regis*  
 “*Angliæ, prædictis burgensibus, seu consue-*  
 “*tudinibus prædictis, ut afferunt concessis.*”

“*The burgesses of the said town were ac-*  
 “*customed to send to parliament two burgesses*  
 “*to represent the community of the said bo-*  
 “*rough.* They also say, that there is no evi-  
 “*dence either of the charter of Athelstan, long*  
 “*since king of England, or of any of the said*  
 “*customs which they assert were granted to*  
 “*them.*”

This not satisfying the burgesses, they pro-  
 cured a writ *ad quod damnum*, to enquire, Dated 18  
May,  
17 Edw.III.  
 “*si prædicti burgenses dictas libertates eis per*  
 “*cartam prædicti Athelstani, ut prædicitur,*  
 “*concessas, à tempore prædicto usi fuerunt et*  
 “*gavisi, et si carta illa in formâ prædictâ fuerit*  
 “*amissa; nec non ad quod damnum seu pre-*



CHAP. IV. “ iudicium nostrum aut alterius cujuscunque  
 “ cederet, si nos dictas libertates eisdem bur-  
 “ gensibus per cartam prædicti Athelstani, ut  
 “ asserunt, concessas, nec non prædictas liber-  
 “ tates per eos de novo petitas, prout superius  
 “ continentur, per cartam nostram concedamus  
 “ sibi et hæredibus et successoribus suis in  
 “ perpetuam possidendas; et ideo vobis man-  
 “ damus quod ad certos dies et locos quos  
 “ vos tres, vel duo vestrum, ad hoc provide-  
 “ ritis, inquisitionem illam super præmissis et  
 “ ea tangentibus in formâ prædictâ faciatis,  
 “ &c.”

“ Whether the said burgesses have used and  
 “ enjoyed the said privileges granted them, as it  
 “ is said, by the charter of Athelstan, from the  
 “ time aforesaid; and whether the charter in  
 “ form aforesaid was lost, also what injury  
 “ ourselves, or any one, might sustain, if we  
 “ granted by our charter the said privileges as  
 “ granted by that of Athelstan aforesaid, as  
 “ they assert, or a renewal of the same privi-  
 “ leges petitioned for by them as they were for-  
 “ merly held, and to be possessed by them, their  
 “ heirs and successors; and we also command  
 “ you, that on certain days and places, which  
 “ you three, or two of you, shall appoint, you  
 “ hold an inquest upon the premises, and the  
 “ matters relating thereto, in form aforesaid.”

And the return of this writ is as follows:—



“ Inquisitio capta apud Barnstaple coram Ha- CHAP. IV.  
 “ mone de Derworthy et Joan. de Baumfield,   
 “ *justiciariis D. regis ad inquisitionem illam* Dated 17  
 “ *capiendam*, unâ cum Johanne de Stonford et Edw. III.  
 “ Ricard. de Hankeston, in præsent. de Walteri  
 “ de Horton, *vicecomitis Devon.* die Sabbat.  
 “ &c. an. regni Edw. Regius Angliæ tertii 17,  
 “ &c. per sacramentum R. de Wolfe, &c. qui  
 “ dicunt super sacramentum suum, quod villa  
 “ de Barnstaple est liber burgus, *et fuit a tem-*  
 “ *pore quo non extat memoria.* Item dicunt  
 “ *quod burgenses villæ prædictæ, et eorum an-*  
 “ *tecessores diversis libertatibus et liberis con-*  
 “ *suetudinibus per cartam celebris memoriæ D.*  
 “ *Athelstani dudum Angliæ, progenitoris D.*  
 “ *regis nunc, quæ ad dictum burgum pertinent,*  
 “ *à tempore confectionis cartæ prædictæ super*  
 “ *hactenus usi fuerunt et gavisi, et adhuc gau-*  
 “ *dent et utuntur, videlicet quod tenementa*  
 “ *sua, &c. &c. ac ad singula parliamenta D.*  
 “ *regis duos burgenses pro communitate qui-*  
 “ *dem burgi mittere, nec non in singulis taxa-*  
 “ *tionibus, &c. consueverunt.* Dicunt etiam,  
 “ *quod prædicta carta, de prædictis libertatibus,*  
 “ *et consuetudinibus, eisdem burgensibus per*  
 “ *prædictum D. Athelstanum facta, casualiter*  
 “ *fuerit amissa.* Item dicunt quod non est ad  
 “ damnum seu præjudicium D. regis aut alterius  
 “ cujuscunque, licet D. rex per cartam suam  
 “ omnes libertates prædictas eisdem burgensi-



CHAP. IV. “bus et hæredibus, &c. per cartam prædict.

“Athelstani prius concessas concederet in perpetuum possedendas.”

“An inquest taken at Barnstaple before  
“Hamon de Derworthy and John de Baumfield,  
“*justiciaries of the lord the king, to hold the*  
“*inquest*, together with John de Stomford and  
“Richard de Hankeston, in the presence of  
“Walter de Horton, sheriff of Devon, on the  
“day of, &c. in the 17th year of the reign of  
“Edward king of England, by the oaths of  
“Richard de Wolfe, &c. who say upon their  
“oath, that the town of Barnstaple is a free  
“borough, and has been from time immemorial.  
“*They also say that the burgesses of the said*  
“*town, and their ancestors, have hitherto used*  
“*and enjoyed claims, privileges, and customs,*  
“*by a charter of Athelstan of glorious memory,*  
“*long since king of England, the progenitor*  
“*of the now king, and which appertained to the*  
“*said borough from the making of the said*  
“*charter, and they still use and enjoy the same,*  
“*viz. because, &c. and they have been accus-*  
“*tomed to send to each and every parliament*  
“*of the king two burgesses to represent the*  
“*community of the said borough, also in all*  
“*tallage, &c.* They also say, that the said  
“*charter of the aforesaid privileges and cus-*  
“*toms, granted by Athelstan aforesaid to the*  
“*said burgesses, has been casually lost.* They



“ also say, that no injury or prejudice to the CHAP. IV.  
 “ king or any one can arise, if the king could  
 “ grant by his charter the same privileges to the  
 “ same burgesses and their heirs, as formerly  
 “ granted by the said charter of Athelstan to  
 “ them for ever.”

And we find that they have continued to send Lord Lyt-  
 burgesses to this day to serve in parliament, telton, vol.  
 without intermission, and without any new iii. p. 416.  
 charter or franchise granted to them, but purely  
 by *prescription* or inherent right; and the in-  
 ference from these proceedings seems to be, that  
 the custom of sending representatives to parlia-  
 ments, or great councils, was then known to  
 be ancient. In the final issue we find, that,  
 although the privileges granted by, and claimed  
 in virtue of, the charter, which the burgesses  
 declare to have been lost, were not confirmed or  
 renewed; still the right of sending representa- Ib. Hen. II.  
 tives to serve for them in parliament was ad- vol. iii. p.  
 mitted to be good *from long usage and pre-* 417.  
*scription*, though it was determined that they  
 did not hold immediately of the king, but were  
 tenants of John de Audley, one of his barons,  
 who held the borough of him *in capite* by ba-  
 ronial service. It is then evident that the  
 right of sending representatives was not confined  
 to a *tenancy in chief of the crown*, but might  
 belong to a sub-vassal.

That this ancient *right* of representation was



CHAP. IV. possessed by the whole body of the *people* antecedent to the Conquest, is proved by that great antiquary Mr. Lambard, in his *Archaionom.* “Now as these written authorities,” (viz. the Saxon laws he had quoted,) “do undoubtedly confirm our assertion of the continuance of this manner of parliament, so is there also unwritten law, a prescription which does no less uphold the same: for it is well known, that in every quarter of the realm a great many *boroughs* do yet send burgesses to parliament, which are nevertheless so ancient, and so long since decayed and gone to ruin, that it cannot be shewed that they have been of any reputation since the Conquest, and much less that they have obtained this privilege by the grant of any succeeding king; so that the interest which they have in parliament groweth from an ancient usage before the Conquest, whereof they cannot shew any beginning.”

Lamb. Archaion.

And besides these authorities, grounded on statutes and records, evident indications of the presence of the people in the national councils, of which they were a constituent part, are to be found in contemporary accounts of transactions of parliament, from the death of Edward the Confessor to that of Henry the Second.

Stuart on the English Constitut. p. 287, 288, 289.

Every free man in Germany assembled in person at the councils of his nation, or voted for



the representation of his district. The same CHAP. IV.  
conduct was observed in England. The possession of land was the mark of freedom amongst the Saxons; and in those states of the heptarchy where the people could appear in a body, every individual who had seized or been endowed with territory, had a title to attend its councils: but in those which were more populous, and where the individuals could not easily be collected, the holders of lands gave their votes for representatives; and from the time the Saxon kingdoms were united, the commons appeared generally in the way of representation.

In every inferior court which had been in Germany and England, the freemen, or possessors of land in the territory over which it presided, assembled as the *suitors* there. Would we every where perceive the marks of a limited and free administration, in the lowest establishments, and yet find them to be wanting in that which was highest and most important? It is impossible. The whole landholders among the Saxons were the suitors of the council of the nation. The boroughs or towns, being endowed with land, had a title to be present by their deputies; and the *witas*, or wise men, who are mentioned as part of the Anglo-Saxon parliament, were the knights of the shire and the burgesses.

The ancient records of Malmesbury, Totness,



CHAP. IV. and various other boroughs which sent representatives to the national councils in the time of the Saxons, and whose charters from the Saxon kings, confirmed by succeeding monarchs, are still in existence, and *by which* they continue to exercise that right to the present day, furnish ample proofs of this ancient representation.

The borough of Lewes, in Sussex, is a monument of Saxon right, not mutilated by resolutions of election committees or royal charters. It has sent members to parliament, by right of prescription, from the earliest period to the present time, without intermission, having never accepted a charter, or grant of enfranchisement, from any king whatever. The right of voting is in the HOUSEKEEPERS, and the returning officers are the constables, agreeable to the Saxon constitution; this prescriptive right the borough claims from the reign of King Athelstan; and in the time of Edward the Confessor, it had one hundred and twenty-seven burgesses. This also further proves, as this town never had a corporation, that the term "*burgess*" must ever have been understood to denominate a *householder*, as no other description of burgesses was ever created, or obtained existence in this free borough.

There are many other cities and boroughs of the kingdom which sent citizens and burgesses



to parliament by prescription, which did not hold of the king *in capite*. The borough and castle of Arundel, which was held of the earl, having been granted by Henry the First to Hugh Montgomery earl of Arundel; the city of Bath, which held of the bishop of that city; the city of Wells, which never held of the king, but always of the bishop, and is called "*Villa Episcopi*" in all public writings belonging to that church, was made a free burgh in the third year of King John; Beverley was made so by Thurstan archbishop of York, which was confirmed by Henry the Third; Bodmin, which was held by the priors of Bodmin; Bridgwater, for King John granted to William Brewer, "*quod Bridgwater fit liber burgus*;" Coventry always held of the earls of Chester; Bishop's Lynne, King John granted to John bishop of Norwich, "*Quod burgus de Lynna fit liber burgus in perpetuum*." We find by the acts still extant, that all these sent burgesses to parliament as early as any of those which were held *in capite*. In Cornwall the boroughs almost all held of the earls, and not of the king; and in the counties of Hereford and Worcester there were many boroughs which were held under the respective bishops.

It being thus ascertained by the most indisputable authorities, that the most valuable privileges which man can possess, the foundation



CHAP. IV.  stone of liberty and personal security, that of a representative legislature and trial by jury, were the inherent right of the people of England from the remotest period, it will be further proved in succeeding chapters from the statutes of parliament, and from the writs and returns of members, that these rights were universal, and that every Englishman claimed them as his birth-right, and exercised them uncontroled until the act of disfranchisement of the eighth of Henry the Sixth confined the right of suffrage in counties to freeholders of forty shillings per annum; and subsequent resolutions of the committees of privileges and elections, and charters of limitation, confined the same right in cities and boroughs to corporations, freemen, burgage-holders, and various other local tenures, and to descriptions of persons unknown to the ancient usage and constitution of parliament, subversive of the indefeasible, unalienable, and universal *right* of the people of England.



## CHAPTER V.

*Wittena-gemote, or Mycel-Synoth, in Latin, Magnum, or Commune Concilium Regni, the Great or Common Council of the Kingdom, consisting of the King and the Three Estates, which we now call our Parliament.*

~ ~  
CHAP. V.

THIS court, the author of the Mirror of Justice expressly tells us, “ King Alfred ordains a  
 “ perpetual custom, that twice in the year, or  
 “ oftener, in time of peace, if business so re-  
 “ quired, they should assemble at London to  
 “ treat of the good government of God’s people,  
 “ and how folks should be restrained from of-  
 “ fending, and live in quiet, and should receive  
 “ *right* by certain ancient usages and judgments,  
 “ &c.” In this author’s time, who lived in  
 the reign of Edward the First, Sir Henry Spell-  
 man observes, “ The great council of the king-  
 “ dom anciently met of course twice in the year,  
 “ without any express summons from the king;  
 “ and this was afterwards altered to thrice in the  
 “ year, viz. at the three great feasts of Christ-  
 “ mas, Easter, and Whitsuntide, when the king  
 “ met his estates with great solemnity, wearing  
 “ his crown upon all solemn days of entertain-  
 “ ment; and when the feasting was over, they  
 “ fell to dispatch the public affairs.”



CHAP. V. These stated councils held *ex more*, as our historians term it, continued, according to ancient custom, long after the Conquest; but if this council happened to meet at any other extraordinary time, then the king's special summons was requisite, as stated by Ingulf under Anno Dom. 948. "King Edred summoned the  
" archbishops, bishops, and all the *procures* and  
" optimates to meet him at London on the Pu-  
" rification of the Virgin Mary."

Gonterus, an ancient German author, who wrote on the state of the empire in his times, says, "*Prelati, procures, missisq. portentibus urbes.*" And the same general or great council, consisting of clergy, nobility, and deputies from cities and towns obtained in those days, in Sweden, Denmark, France, Spain, Portugal, and Italy. The states of Friezeland, Westphalia, Holstein, and Jutland, held similar great councils, where they deposed their kings for tyranny or mal-administration, and met twice in the year, according to custom, at a certain time and place, without any kingly summons; and as the founders of the Anglo-Saxon heptarchy were aborigines of those provinces, they introduced the same system through the different kingdoms.

These great councils, and the different orders and degrees of men which formed them, appear, from the venerable Bede and other authorities,



to be of a more early date than kingly govern- CHAP. V.  
ment, and even prior to christianity; as they  
all prove that the first princes in all these go-  
vernments were originally elected, and were an  
effect not a cause.

Dr. Brady has with much labour attempted to prove, but ineffectually, that the members who composed the wittena-gemote or great council, were bishops, abbots, nobles, and tenants *in capite*. But, unfortunately for this time-serving writer, there was no such description of persons as *tenants in capite* in those times, nor until after the introduction of a feudal system.

This great council, or parliament in general, was composed of bishops and abbots; but in the great council where Phlegmund, archbishop of Canterbury, together with King Edward the Elder presided, we find it consisted *episcoporum, abbatum, fidelium* "*procerum populorum*," which last words can imply only *the faithful representatives of the people*. And in the ancient Saxon laws and charters, they are distinguished sometimes under the title of *procuratores*, as appears from the annals of Winchelcomb, wherein there is a charter of Kenwulf king of the Mercians, bearing date anno Dom. 811, where all the orders of men summoned to be present at that assembly are thus particularly designated, *Merciorum optimates, episcopos, principes, comites*,

In Bibl.  
Cotton.  
Tib. c. 4.



CHAP. V. *procuratores, meosque propinquos, nec non cuthedrum regem Cantuariorum, atque Suthedrum Regem Oriental. Saxon. cum omnibus qui testes nostris synodalibus conciliabulis aderant.*

The same word is introduced in a charter of King Athelstan's, for certain lands granted to the abbey of Abington, A. D. 931, which is entered in the great register belonging to that abbey, now in the Cottonian library, with this conclusion: "Hæc charta in villa regali quæ  
 "Ætwelope nuncupatur, episcopis, abbatibus,  
 "ducibus, *patriæ procuratoribus*, regiâ dapsilitate  
 "ovantibus prescripta est."

By *patriæ procuratoribus* we know not what else can be understood, but the *deputies or representatives of the cities and chief towns*, who then elected members to those general councils, except it is the remains of the Teisbantyles of the ancient Britons.

Tome iii.  
p. 700.

In all the Saxon laws the members of the wittena-gemote are styled *witas*, or wise men, in Latin *sapientes*; and we have the authority of the learned Du Fresne, who in his Glossary assures us, that among the Lombards in Italy, the chief citizens were called *wise men*, by whose counsel public affairs were transacted: and for this he instances Hieron. Rubens, whose authority is very important to prove the same title to have been in use among the English Saxons of the same æra with the Lombards, as Grotius



has proved, in his preface to his Gothic history, CHAP. V.  
 the Lombards were but a tribe of those ancient  
 Goths from whom the English Saxons were also  
 derived.

To place these authorities in their clearest  
 light, we shall quote that learned antiquary Mr.  
 Lambard, who translated the Saxon laws, and  
 who has elucidated the constitution of this an-  
 cient government better than any writer of mo-  
 dern times.

“ That whereas in the beginning of each law, Archaion.  
p. 256, 257.  
 “ viz. those made by the Saxon kings and his  
 “ wise men, both of the clergy and laity, in the  
 “ body of the laws, each statute being thus, *and*  
 “ *it is the advice of our lord and his wise men:*  
 “ so as it appears that it was then a received  
 “ form of speech, to signify both the spirituality  
 “ and the laity, that is to say, the greater *nobi-*  
 “ *lity*, and the less or *commons*, by this one  
 “ word, *witan*, *i. e.* wise men.

“ Now as those written authorities do un-  
 “ doubtedly confirm our assertion of the con-  
 “ tinuance of this manner of *parliament*, so is  
 “ there also unwritten law or prescription, that  
 “ doth no less infallibly uphold the same. For Gatton, &c.  
 “ it is well known that in every quarter of the  
 “ realm a great many boroughs do yet send  
 “ burgesses to the parliament, which are never-  
 “ theless so ancient, and so long since decayed,  
 “ and gone to nought, that it cannot be shewed  
 “ that they have been of any reputation at any



CHAP. V. “ time since the Conquest, and much less that  
“ they have obtained this privilege by the grant of  
“ any king succeeding the same; so that the inter-  
“ est which they have in parliament groweth by  
“ an ancient usage before the Conquest, whereof  
“ they cannot shew any beginning: which thing  
“ is also confirmed by a contrary usage in the  
“ self same thing; for it is likewise known, that  
“ they of ancient demesne do prescribe in not  
“ sending to the parliament, for which reason  
“ also they are neither contributors to the wages  
“ of the knights of the shires, neither are they  
“ bound by sundry acts of parliament, though  
“ the same be generally pursued, and do make  
“ no exceptions of them. But there is no ancient  
“ demesne, saving that only which is inscribed  
“ in the book of Domesday, under the title of  
“ Terra Regis, which of necessity must be such  
“ as either was in the hands of the Conqueror  
“ himself, who made the book, or of Edward  
“ the Confessor, that was before him. And so  
“ again, if they of ancient demesnes have ever  
“ since the Conquest prescribed not to elect  
“ burgesses to parliament, then, no doubt, there  
“ was a parliament before the Conquest, to the  
“ which they of other places did send their bur-  
“ gesses.”

This authority, together with the petitions from St. Albans and Barnstaple, given in a former chapter, and taken from the council records, in which both those towns claim to send



burgesses to parliament, as their ancestors had done in the reign of Edward and his progenitors, afford ample proof of the existence of a representative Parliament before the Conquest. The town of Barnstaple asserted their right from the reign of Athelstan, upon which the king and his council ordered a writ of enquiry, which would never have been done if the cities and boroughs had not sent representatives to parliament before the eighteenth of Edward the First, a period but little more than fifty years to the time of these petitions, which being within the memory of so many then living, the king and his council would never have ordered a writ of enquiry upon a vain or idle pretence. On the contrary, we find these boroughs were both permitted to send members upon this prescriptive claim, and have continued to do so without intermission ever since. So far from this right having originated in grants or charters from kings and queens, we find that Lewes in Sussex, and many other towns, have enjoyed this privilege by the inherent right of prescription alone, and not by any grant or charter accorded by any king or queen whatever. Nor can any prescription be claimed of later date than the first year of King Richard the First, which is almost eighty years before the forty-ninth of Henry the Third, when, Doctor Brady asserts, the commons were first summoned to parliament.



## CHAP. V.

~~~~~ All the kingdoms of Europe had their estates general, or parliaments, at this period, in which the cities and great towns had their particular representatives in the legislative counties or assemblies of each country; and it cannot be supposed that England alone, whose king was not more absolute than any other monarch of his time, had not its delegates in the common council of the kingdom, representing the people, till so long after the Conquest as the forty-ninth of Henry the Third; an inference too improbable to be drawn.

The words "*clerus* and *populus*," which frequently occur in several ancient charters and laws of the Anglo-Saxon kings, and other writings of those times, wherein is mentioned the great councils of the kingdom, can imply nothing but the clergy and the people, who were all assembled by their representatives in these councils. The word *populus* could never be supposed to stand for "nobles or landed proprietors," obviously meaning the *people* at large, as *clerus* implies the whole body of the clergy. The mode of placing the words "*populus* and *populi*" after the words "*proceres, optimates, senatores, or senatus, &c.*" in these charters, gives a decided precedence to the latter, and marks distinctly and indiscriminately the difference.

The charter of King Ethelred granting and

confirming several privileges to the monastery of Wolverhampton, concludes in these words: CHAP. V.

“Hæc decreta sunt Sigerici archiepiscopi in
 “placito coràm Rege Ethelredo, et Eboracinsi
 “archiepiscopo, et omnibus episcopis, abbatibus
 “regionis Britanniae, seu senatoribus, ducibus,
 “et *populo terræ.*”

Vid. Monastic. Anglican. vol. i. fol. 988. col. 2.

The charter of Edward the Confessor to the abbey of Westminster, made in a great council of the kingdom, held in the last year of his reign, concludes thus: “Hanc igitur chartam
 “meæ donationis et libertatis, in die dedicationis prædictæ ecclesiæ, recitari jussi, coràm
 “episcopis, abbatibus, comitibus, et omnibus
 “optimatibus Angliæ, *omnique populo audiente*
 “*et vidente.*”

Vid. Spelm. Concil. f. 625.

The representatives of cities and boroughs are here meant and understood, as being present at the sealing of these charters in the great council, as well as the senators, ealdermen or earls, and the optimates, and the representatives of the clergy; for it never can be imagined that the whole clergy and people of England were called into the great council to witness this solemnity.

In the law of King Ethelwolf, anno dom. 855, concerning the grant of tithes, which is recited in the laws of Edward the Confessor, and confirmed by King William the First, under the title “de Apibus, et de aliis minutis Decimis,”

Lamb. L. L. Edw. regis, cap. 8.

CHAP. V. it is expressed, “ Hæc scilicet, concessa sunt à rege, baronibus, et *populo*.”

To all these, as well as innumerable other authorities, the word *populus* has a distinct signification from that of barones, thanes, or optimates, who are mentioned as being present in these great councils or parliaments; where it is expressly stated that tithes were granted by the king, barons, and people of England, as we now say, the king, lords, and commons.

Spelman
Consil.
tom. i. f.
219.

We have the authority of the Saxon laws, as well as their charters, to prove that the wittena-gemote possessed the sole power of enacting and repealing laws, as the English parliament in the present day. In the laws of King Ina, to be found in the preface of Henry Spelman's Councils, is stated, “ that in a mycel synod several
“ ecclesiastical as well as civil laws were made
“ to these ends, viz. ad concordiam publicam
“ promovendam, per commune concilium, et
“ assensum episcoporum, principium, procerum,
“ comitum, et omnium sapientum seniorum, et
“ *populorum* totius regni.”

Ibid. p. 193.

King Alfred commanded these laws to be compiled, and only such as he approved to be retained, MID MINRA WITTENA GETHEAT, in English, *with the consent of his wittena-gemote*.

“ I Alfred king of the West-Saxons shewed
“ these laws to all my witas, and they all liked
“ they should be holden.”

In the title of King Ethelred's laws, as we find CHAP. V.
 in the same author, "*Hoc est concilium quod*
 "ETHELREDUS Rex, et SAPIENTES sui con-
 "dixerunt, ad emendationem et augmentum
 "pacis, omni populo apud WODESTOCAM in
 "MERCENA LANDA, id est, in terrâ MERCE-
 "NORUM."

Brompt. ut
 supr. col.
 893, 894.

To another body of laws made by the same Ibid. fol.
 King Ethelred, we find this title: "*Hæ sunt*
 "leges quas ETHELREDUS Rex, et SAPIENTES
 "SUI constituerunt apud VENETYNGUM, ad
 "emendationem pacis et fælicitatis incremen-
 "tum."

895.

By these two last titles to King Ethelred's decrees we perceive, that "concilium" in the first does not barely signify advice or counsel, but the laws and statutes which were made in this great assembly, not by King Ethelred alone, but by him and his wise men; and what is called concilium in the former, the latter calls leges, and were all enacted by the joint and unanimous consent of the king and his great council.

This is farther confirmed from ancient charters, that out of the great register of Abingdon before stated, and which states, "*Ego ECBERT*
 "Rex OCCIDENTALIUM SAXONUM cum licen-
 "tiâ et consensu totius gentis nostræ, et unani-
 "mitate omnium optimatum, &c."

Bibl. Cott.
 sub. Effig.
 Claud. b.
 ix. cap. 31.

From whence we observe, that as early as the time of King Egbert the whole Anglo-Saxon

CHAP. V. nation, as well as the chief men of it, are said
 to give not only their consent, but their license
 to this charter, without which the authority of
 the king, and the unanimity of these chief men,
 would have been null and void.

In a charter of King Canute to the abbey of
 Briadricesworth, since called St. Edmundsbury,
 in the archives of the king's remembrancer of
 the Exchequer, is this preamble: "*Ego CA-*
 " *NUTE, rex totius ALBIONIS insulæ, et aliarum*
 " *nationum plurimarum, in cathedrâ regali*
 " *promotus, cum consilio et decreto archiepis-*
 " *coporum, abbatum, comitum, aliorumque*
 " *omnium fidelium elegi sancient.*"

Rot. Cart.
 4. E 3. m.
 24. n. 58.

This charter carries with it a greater weight
 of proof, because made by a prince who came
 in partly by force, and therefore it might
 be conceived he would have exerted a more
 absolute power in making laws by his sole au-
 thority; and yet we find him so far from daring
 to do that, that he grants this charter not only
 by the *consent*, but by the *decree*, of the arch-
 bishops, bishops, abbots, earls, and all his other
faithful subjects. This last term must compre-
 hend the deputies, or representatives of cities
 and towns; in which sense Sir Henry Spelman
 understands it.

Spel. Gloss.
 f. 225. col.
 1.

We have also similar proofs in the Saxon
 annals, under the years 994 and 1002, in which it
 is said expressly: "*THA GÆREDDE SE KYNG*

AND HIS WITAN ;” that is, it was decreed by the King and his witas, or wise men, to make peace with the Danes, and to raise a tax for that purpose. CHAP. V.

Having shewn the ancient authority of the estates of the kingdom to have been always necessary and concurrent with that of the King and the other powers they possessed ; it is important to notice that all ecclesiastical, as well as civil laws were enacted in the *mycel-synods*, or *wittena-gemotes*. Mr. Joseph Washington, in his Observations on the Ecclesiastical Jurisdiction of the Kings of England, exhibits the following account of the Saxon heptarchy. P. 13, 14, &c.

“ No marvel if we find this people submitting
 “ to nothing in religion, but what was ordained
 “ by themselves ; *de majoribus omnes*, was one
 “ of their fundamental constitutions before they
 “ came hither, and it is continued here to this
 “ day. And matters of religion were amongst
 “ their *majora*, even before they received chris-
 “ tianity. Tacit. de Morib. German. cap. 11.

“ Accordingly *Edwin*, King of *Northumber-*
 “ *land*, *habito cum sapientibus consilio*, re-
 “ nounced his paganism, and he and they em-
 “ braced the christian faith. This is described
 “ in Bede and Huntingdon, to have been done
 “ in such an assembly of men, as the *parlia-*
 “ *ments* of those days are generally mentioned to
 “ consist of. Vide Bede Eccl. Hist. l. ii. c. 13. Hunting. l. 3. f. 188.

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Vide Spel.
Concil.
ubicunq;

“ After the christian religion had spread itself
 “ among the *Saxons*, the *bishops* and *clergy*
 “ frequently held synods without the laity, for
 “ church visitation, and made constitutions for
 “ the regulation of the clergy, to which they
 “ obeyed and submitted by reason of their oath
 “ of *canonical obedience*: but as nothing trans-
 “ acted in those assemblies of the clergy, bound
 “ the people, so can no instance be produced of
 “ the clergy being bound by any act of the king
 “ not assented to in the provincial synods of
 “ those times.”

These synods may easily be distinguished
 from our mycel-synods, or wittena-gemotes, not
 only by the matters transacted in them, but by
 the persons who therein presided, and subscribed
 to them, the pope's legate, or else the archbi-
 shop of Canterbury or York, and the bishops,
 abbots, &c., without the names of any temporal
 persons present, when they were mere eccle-
 siastical synods; but if they were mixt as well
 for temporal as ecclesiastical matters, both the
 king and archbishop are said to preside;
 otherwise, the king alone: and before the union
 of the heptarchy into one kingdom, these synods
 were commonly held in the dominions of that
 king who was then most powerful, so that the
 lesser or weaker princes appeared there in per-
 son, or by their deputies. Those councils were
 looked upon, as to all temporal and ecclesiastical

matters, no other than particular synods, or councils of those kingdoms wherein they were held, or whose kings consented to them. CHAP. V.

Sir Henry Spelman, in the first volume of his *Concil.* has described the ecclesiastical jurisdiction of the Saxons; in which we find every office elective, as they were in the civil government, and Mr. Washington adds, "That bishoprics, and other *ecclesiastical dignities*, were in the Saxon times conferred in *parliament*." Lambard's
Archaionomia, f. 62,
97.

We have the testimony of Ingulphus, who was abbot of Crowland, in William the Conqueror's reign, who says that for many years past there was no election of prelates absolutely canonical: but all dignities, both of bishops and abbots, were conferred by the great council of the kingdom. After which, the person so elected, being first consecrated, the king invested him with the temporalities, *per traditionem baculi et annuli*.

And that this custom was very ancient will appear by the election of Wilfred to be bishop of *Hagulstade*, in the year 666. Stephen Heddi, in his life of that prelate, expressly says, "Then the two kings of Northumberland, after some time, held a council with the wise men of their own nation, to consider whom they should choose to fill up the vacant see, &c., and they all unanimously answered, 'We have none fitter nor more worthy in our na-

In vita Wilfridi, cap. 11. edit. per Rev. Dom. Dr. Gale, f. 46.

CHAP. V. “ ‘ tion than Wilfred, the presbyter and abbot ;’
 “ and thereupon being presently elected, he
 “ was consecrated bishop.”

Claudius,
 A. 5.

We have the same authority in an ancient manuscript Life of St. Erkenwald, in the Cottonian library. “ It happened that *Cedda*,
 “ bishop of London, deceasing, *Erkenwald*,
 “ that holy man, by the consent of King Sebba,
 “ and the nomination of all the people, was
 “ promoted to the episcopal throne.”

Bibl. Cotton.
 Vitellius, D. 17.

Long after this, the author of the manuscript Life of St. Dunstan, informs us he was made bishop after this manner.—In the year 958, a great council of the wise men of the kingdom was held at Bradanforde, and there, by the election of them all, Dunstan was advanced to be bishop of Worcester.

The next example is that of St. Wulstan, bishop of Worcester, who being sent for on purpose to be made a bishop, in the year 1170, the manner of his being elected is thus related, in the Life of that Saint. “ This holy man being called before the great council he was commanded to accept the gift of a bishopric ; but he endeavoured all he could to wave the acceptance of it, alledging that he was altogether unfit for so great an honor ; but the whole assembly not admitting his excuse, they all unanimously elected him.” And Mathew Paris tells us, concerning this bishop’s election, there con-

Mat. Paris.
 fol. 20.

curred *plebis petitio, voluntas episcoporum, gratia procerum, regis autoritas.* CHAP. V.

In the Saxon annals, in the year 970, we find that *Oskytel*, archbishop of *York*, deceased, had been, by the consent of King *Edward* the Martyr, and all his wise men, consecrated archbishop of that see.

In the year 994, we find, that on the death of *Sigeric*, the archbishop, *Alfric*, bishop of *Winchester*, was elected in his room, on Easter day, at *Ambresbury*, by King *Athelred*, and all his wise men; from whence it appears, that not only the king, but the great council of the kingdom, had a share in this election.

We have several other instances in the Saxon annals of different abbots, elected in the same assemblies to the greater monasteries; but it is not our intention to enter into the ecclesiastical history of those times farther than to shew the power residing in the wittena-gemote, or parliament of the Saxons, who had also authority to deprive bishops of their sees.

Osbern, in his *Life of Dunstan*, relates the deprivation of Archbishop *Brihtelme*, in the following words: “*Bryhtelme*, within a few days after he had received his bishopric, not thinking with himself that he was fit for so great a charge, being commanded by the king and all the people to quit it, departed,

CHAP. V. “ and returned to the church he had lately left,
“ though not without shame.”

We have also an account in the Saxon annals, under the year 1052. “ That Earl Godwin, “ having in a great council held at London, “ purged himself and his sons of the crimes laid “ to their charge, and thereupon restored ; “ Archbishop Robert, the Norman, having just “ before fled away into his own country, was “ not only, by a decree of this council, banished, “ but also deprived of his archbishopric ; and “ Stigand was then advanced to that see in his “ room ; and we no where find there was any “ schism in England among the clergy at that “ time, because these two primates of the church “ had been deprived without their own consent, “ by the lay as well as spiritual part of the “ great council.”

The ancient right of the people to elect their representatives and magistrates, and the powers of parliament being established upon such incontrovertible authorities, this long possession of freedom strengthens that original right which is at least as old as the monarchy itself, but suppose it were otherwise, if liberty were but a year old the people would have just as good a right to claim and to preserve it as if it had been handed down to them from many ages. A long prescription is not necessary to give force to the natural rights of mankind, nor is slavery so

valuable an inheritance that men must perpetually wear its chain without enquiring how every link of it was forged. Our constitution was, perhaps, the most free of all the limited monarchies that have been known in the world, the nobles and people had such a share in the legislature, and such a weight in the government, that the king could do nothing but with their assistance and by their advice; all offices of power or judicature were elective, the estate of the crown was held unalienable, and only sufficed to maintain the expense of the royal household and civil government. No causes were tried but by juries, even in temporal matters, so that the lives and properties of the people could not be touched, without their own co-operation, either by the king, the nobles, or the clergy. Such was the Saxon constitution, when by the wisdom and virtue of two or three great kings it received its final perfection.

CHAP. V.

CHAPTER VI.

*Right of Possession to Landed Property in the Time of
the Saxons.*

CHAP. VI.



BY ascertaining the nature of the right of possession, we shall be able to know those freemen who had the privilege of attending, either personally or by representative, the wittena-gemote, or parliament of the kingdom.

The property of the land was certainly the unalienable right of that collective body of men which composed the armies of our Saxon conquerors. Each soldier was not only a voluntary associate, but a co-partner in all the hazards, and a partaker of the plunder and rewards arising from victory. Although under the command of one chief, they were equally free and independent with himself, and had as just a claim to their portion of the conquered lands as their leader. For their wars were not undertaken, like those of modern date, at the caprice or ambition of a single individual, who thus sacrifices for a whim, or the extension of tyranny, millions of lives and treasure, before his sanguinary thirst, or inordinate ambition, is satiated. Inured to toil, hardship, and privations,

war became a profession, which stimulated them CHAP. VI.
to the conquest of countries where nature, more
bounteous than in their own, invited their settlement. Thus all had one common danger and interest. Engaged in the same enterprize, they claimed and shared the same emoluments as their generals, except that marked by the distinction of rank. The general, assisted by his principal officers, divided the conquered land into as many portions as there were corps of different provinces among the victors. These portions were subdivided amongst the several families, and individuals composing each corps, according to their merit and degree of rank. Thus every tribe held its possession independent of the rest, except being subject to the same civil government which they had brought from Germany. The larger divisions constituted the *pagi* or counties, and the lesser formed so many trythings, hundreds, and tythings, each under its own elderman, or proper officers, from the bands being composed of such proportionate distinct numbers as tens, hundreds, and thousands. Each tribe, or provincial force, is described to have been thus regularly divided; and in their military expeditions, the force of every province always marched out and fought by itself. To this constitution of their armies, and the subsequent division of lands they acquired by conquest, may be attributed the origin of

CHAP. VI. that division of our shires and counties which
 ~~~~~ has been erroneously ascribed to Alfred. That  
 it was a German institution appears from the  
 same division of lands being made in other  
 countries where those northern warriors esta-  
 blished themselves. Tythings and hundreds  
 were not only known in Italy, but are recorded  
 to have been there long before the days of  
 Alfred.

Muratori,  
 Antiq. Ital.  
 Med. Ævi.  
 Diss. x. p. 9.

Clotharius, the second king of the Franks, is  
 said to have made a similar division of his domi-  
 nions so early as A. D. 595. In the reign  
 of King Offa, A. D. 794, and eighty years  
 before the reign of Alfred, shires are mentioned  
 to have been then in England. According to  
 Muratori, they practised the same jurisdiction  
 in those rural divisions in Italy as we find was  
 established by the Saxons in England. The  
 deacons, or tything-men, presided over ten, and  
 the centenarii over one hundred families; and  
 both administered justice in all petty causes that  
 were not presentable to the county courts. In  
 support of this historical fact, he quotes, amongst  
 others, the following passages from Walafridus  
 Strabo. *Quibus ex verbis inferri posse videtur  
 populum in agro, sive in castellis, ac pagis ha-  
 bitantem, divisum olim fuisse in centenas fa-  
 miliarum; has autem rursus divisas in decenas  
 sive decanias; illis centenarii, istis decani pro-  
 cerant; utrique jus populo suo in minoribus*

Walafr.  
 Strabo.



*causis dicebant.*—"From which words it may CHAP. VI.  
"be inferred, that the people inhabiting the  
"country, castles, or villages, were formerly di-  
"vided into hundreds, or a hundred families;  
"and these again into tithings or ten families:  
"over the hundreds the centenary presided, and  
"over the tithings the deacon or tithing-man,  
"and both administered justice in petty causes  
"to the people." This being written by an  
Italian author of "the state of Italy in its middle  
age," proves that its civil government was  
chiefly formed on the military establishment,  
similar to that of our ancestors. To their being  
free, and not hireling auxiliaries, modern Europe  
undoubtedly owes the few liberties it now pos-  
sesses. Had they been such, the countries they  
vanquished would have been either desolated,  
or have become tributary to their tyrant-mas-  
ters.

Indeed, the freedom they established in every  
conquered country demonstrates their natural  
independency. Rollo, the ancestor of William  
the First, allowed the same right to his soldiers.  
He divided Normandy by the most exact divi-  
sion among the troops he led to its conquest.  
And the following is a remarkable instance how  
far this principle obtained even among those  
who may be termed mercenaries, in contradis-  
tinction to free warriors. Amongst the plunder  
of a province, a piece of church plate was taken:



CHAP. VI. this the prince wished to restore to the clerical owners ; but one of the soldiers so insisted on his right to a share, that he cut off his portion with his sword. Rollo, not daring, then, to resent this opposition to his authority, concealed his resentment till he had an opportunity to destroy this spirited soldier. Hence princes were obliged to bend beneath the vigorous arm of natural justice until they could raise the sword of tyranny with safety and effect.

The property of land, from what has been observed, was possessed by every individual—*per me* and *per tout* ; by self and by all.—The interests of the lands thus acquired were *allodial*. It was possessed free from all those services and incumbrances which afterwards distinguished feudal tenures. The three obligations, or the *trimodis necessitas*, every individual owed to himself as a member of the community, which it was his interest to preserve, and were the only services he was obliged to perform. These were, to serve in the wars, maintain public bridges, and keep the castles repaired and fortified.

Lindenbr.  
Glossar. to  
his collect.  
of the anc.  
laws of the  
Franks.

According to the Glossary of Lindenbrogius, the tenure of their allodial possession was an inheritance which a person could either sell or bestow as his own property. “ Allodium dicetur hæreditas, quam vendere vel donare possum ut mea propria.” The term allodial seems, contrary to the explanation of St. Amand,



to be clearly derived from the original allotments among the northern conquerors. For, by the change of *t* into *d*, agreeable to the nature of the German language, there is an obvious affinity between the words. It is therefore evident, that such lands as were obtained by conquest were not, as some have represented, only annual possessions. Being devisable by sale or deed of gift, they must have been an inheritance. Instead of having only the *dominium utile*, the characteristic of feuds, they had the *dominium directum*, or the absolute property. Those who held under these possessors, by small grants of land given as a reward for tilling the fields of the allodial proprietors, had indeed only the *usufruct* of the soil. And as it was necessary that such servants should be employed to cultivate these possessions while their masters attended the wars, from the necessity of preserving what they had acquired, these were bound to their allegiance by certain annual payments of victuals, &c. This acknowledgment was originally called "a feorm," a farm, which signifies meat, victuals; and the lands thus held were termed *folcland*, in distinction from the *bocland*, which formed the whole territories possessed by the allotments to the original conquerors.

The bocland was divided into inland and outland. The inland was that part which was





CHAP. VI. round the mansion of the lord. This was filled by his own vassals and bondmen, whom he had taken in war. The denomination of possession was afterwards called by the Normans, demesne, or lords' lands, from the king taking such into his possession, and causing the lords themselves to hold them of him, *in capite*, as they obliged their vassals to hold the *folcland* of themselves. The lords being thus obliged to hold such estates immediately of the king, they were termed demesne, as an intermediate possession between socage tenure and allodial property. In this manner were our ancestors deprived of that absolute possession to what just policy, as well as the laws of nature, had entitled them. But as this was an institution of usurping tyranny, the right of possession existed, although the advantage was destroyed.

The outland or utland lay at a greater distance from the mansion, and was divided among those who were found attached and faithful free servants to the chief possessor. This species of land was sometimes granted for life, and sometimes in perpetuity. The first was held upon service by those who were anciently called *ceorls* or churls; but the latter was held by as free possessors as the original grantor. Those who rented it by *feorm* paid like the lords' immediate *gesells*, or vassals, a quantity of provisions annually, which Ina made, in his laws, certain throughout



the territory of the West Saxons. Thus, until CHAP. VI. the time of Henry the First, the kings received no money, but provisions, in payment, for the lands they let to farm. All these possessors, by different tenures of the land, had a share in the legislature. No individual whatever was debarred of this privilege, unless, by becoming a bondman, he had forfeited his right to all exercise of political as well as personal liberty.

Each county being thus divided into two descriptions of persons, one possessing the land as proprietors, and the other cultivating it as vassals, the privilege of attending the legislative assemblies, as well as having a share in the proceedings of the judiciary courts, were necessarily confined to the landholders. But it must be observed, that this privilege of landholders extended to every freeman of the country.

When the Saxon government was first established in England, there was no distinction of freehold and copyhold; the latter, according to Blackstone, was a possession acquired by a villain since the Norman feudal system. Copyholders being thus considered as slaves, they have, notwithstanding their possessions, been thought unworthy of the franchise of a freeman. And to this refinement, on the arbitrary principles of the Normans, every copyholder in the kingdom is deprived of a vote, unless he can claim the right by any other tenure.



## CHAP. VI.

~~~~ War and agriculture being the chief employments of the Saxons, there were no others but possessors of land who could claim the legislative and judicial privileges. Arts and commerce had not then created other ranks to assume the exercise of this invaluable blessing. The ancient right, therefore, of landholders attending their lesser parliaments of the county courts, and the greater of the wittena-gemote has been falsely urged as a precedent to prove, that none but possessors of such estates were competent to the exercise of elective franchise, unless they were freemen of chartered boroughs. As land was the only original possession of our Saxon ancestors, it was this species of property alone which could entitle them to the right of freemen. But had they owned any value of merchandize which claimed the protection of their government, as free and independent members of the community, they would equally have had the power of making their own laws. Actually possessing the right of electing representatives, they would still have been, as they were, their own legislators. The Saxon right of election was not confined to the choice of a representative ; they elected every officer, whether civil, military, ecclesiastical, or even regal. This right of election which our ancestors brought from Germany, existed till lately in that country. The choosing of an Emperor


was a vestige of that noble and distinguished CHAP. VI.
privilege. Thus while the descendants of the
Saxons in England have so lost their ancient
right, as not one in a hundred has the power of
choosing a member, for a petty borough, one
Saxon in Germany has a vote in the choice of
an imperial chief. Such is the different tenor
of liberty in Saxony and England. But this is
not an original fault of our constitution ; it is
the corrupt practices which have turned even
our privileges against our interests.

CHAPTER VII.

Representation in the time of William the First.

CHAP. VII.

THE battle of Hastings secured the throne of England to William the Norman who so far from grounding his title upon the right of conquest, endeavoured to establish the idea of his being heir to King Edward, from the bequest of that monarch. His coronation did not take place without the appearance or form of an election, or free acknowledgment of his claim; for the Archbishop of York, and the Bishop of Coutance severally demanded of the nobility, clergy, and *people*, whether they consented he should reign over them. Before he ascended the throne, he made a compact with his new subjects by his coronation oath, the same as that of the Saxon kings. He did not immediately violate this solemn engagement; but dispensed to all impartial justice, and even conferred great favours on the English. He encouraged intermarriages among the Normans and English, and seemed to wish to unite them in one people.

Vide Pictav-
tagest.
Gul. Ducis
p. 205, 206.
Orderic.
Vit. l. 3.
p. 503.

Pictav. et
Orderic.
Vit. sub. an.
1067 Libr.
Eliens.
Bibl. Cot-
ton, Clau-
dius, 2, 3.
Flor. Wi-
gorn,
p. 635.

A distinction, however, is to be made between the government of William, which was tyrannical, and the constitution established

under him. This was not an absolute monarchy, but an ingraftment of the feudal tenures, and other customs of the Normans upon the Saxon laws of Edward the Confessor. He swore more than once to maintain those laws, which he confirmed in a representative parliament, in the fourth year of his reign; but subsequent alterations produced a different system, and changed both power and property in many respects. The liberty of the subject was not destroyed by these innovations; for, in one of William's statutes it is expressly declared: "That all freemen in his kingdom should hold and enjoy their lands and possessions free from all unjust exaction, and from all tallage; so that nothing should be exacted or taken from them but their free service, which they by right owed to the crown and were bound to perform;" and this was ordained and granted to them, as an hereditary right for ever, *by the common council of the kingdom*," which remarkable statute has been justly stated by Nathaniel Bacon, the first Magna Charta of the Normans. It was ill observed by William, whose will was frequently the only law to both nations.

As power naturally follows property, this revolution gave great security to foreigners; while William, by the establishment of his new institutions, took care to retain the military

CHAP.VII.
Vide Wilkins. Leg. Gul. Conq. 63, et Ger-vase Tiebur. Dial. de Scaccario, c. xvi.

Leges S. 1. 55.

N. Bacon, Civil & Politic. discourses, c. 46.

CHAP. VII. authority in the hands which had enabled him to subdue the kingdom. He introduced into England the feudal law, as established in France and Normandy, and which, during that age, formed the stability, and caused the disorders in almost every monarchical government of Europe. He divided all the lands of England, with few exceptions, besides the royal demesnes, into baronies; and these, with the reservation of stated services and payments, he conferred on the most considerable of his adventurers. Those barons who held immediately of the crown, portioned out a great part of these lands to other foreigners, denominated knights or vassals, and who paid to their lord the same services he himself owed to his sovereign. The whole kingdom was divided into seven hundred chief tenants, and sixty thousand two hundred and fifteen knights' fees. As none of the English were admitted into the first rank, the few who retained their landed property were glad to be received into the second, under the protection of some powerful Norman to load themselves with this grievous burthen, for estates which they had received from their ancestors.

Orderic Vit.
p. 523, Secretum ab-
batis, apud
Selden Tit.
of Hon.
573. Hume,
vol. i. 253.

Orderic
Vital. p.
523.

The grants of the landed property in England made by the conqueror to some of his barons, were excessive. To Geoffry, bishop of Constance, he gave two hundred and fifty manors,

to Ranulf de Baynard, eighty-five, and to Roger de Bresli, a hundred and forty-nine. He made Odo bishop of Bayeux, Earl of Kent, who possessed in that county, and in several others, four hundred and thirty-nine lordships. Robert, Earl of Montagne, on whom he bestowed the earldom of Cornwall, had in that and other counties, seven hundred and thirty-three manors. The manor of Richmond in York-shire had a hundred and fifty-six lordships, besides which the earl possessed, by the gift of the king, his father-in-law, two hundred and seventy-six, in other parts of the kingdom.

See Domes-day Book in the several counties, and Brady Hist. W. I. p. 198, 199, 200.

Such were the first fruits of a government established by a king *in contempt of the people*.

A monarch who could make so free with the *property* of his subjects, would not be very tenacious of their *liberties*. William directed that the Norman proprietors, should compose the national council, and likewise officiate as magistrates upon their estates, with absolute power over their vassals. The Saxon constitution, and the liberties of the people, were then annihilated, and the *wittena-gemote*, or *representation of the people*, sunk under the accumulating tyranny of the feudal system. The

English found that the scheme of their subjection, attended with every species of insult and indignity, was deliberately formed by the prince, and wantonly persecuted by his fol-

Order. Vital. p. 523. H. Hunt, 370. Hume, vol. i. p. 259.

CHAP. VII.

Ingulf,

p. 71.

36. Edw. 3.

c. 15. For-

tesc. de

Caud. leg.

Angl. c. 48.

lowers. He even attempted to abolish the English language. The pleadings in the supreme courts of judicature were in French. The deeds were often drawn, and the laws were composed in that tongue.

But amidst their endeavours to oppress the nation, the king, at the instance of some of his prelates, and moved by the earnest desires of the people, restored a few of the laws of King Edward, which, though not of much importance towards the protection of general liberty, gave them satisfaction as being a memorial of their ancient rights.

Petit's Disc.
pref. p. 41.

Although William increased the severity of his government to acts of oppression, and almost crushed the spirit of the nation beneath the power he assumed, yet we find that *general councils or parliaments* were held in his reign, in which were assembled the *freemen* or *commons* of England, who had a share in making laws; for what could the promised restitution of the laws of Edward the Confessor mean if their wittena-gemote or parliament, “*augustissimum Anglicarum libertatum asylum et sacra anchora*,” the asylum and anchor of English liberty was broken and destroyed.

Mirr. of
Just. c. 1.
p. 9.

One of the fundamental and principal ends of parliaments was for the redress of grievances, and alleviating the oppressions of the people. They were instituted “*pur oyer et terminer les*

“plaintes de tort de le roy, de la roigne et de
 “leur infans, et de eux specialment de queux
 “torts lun ne poet aver autrement common
 “droit.” “To hear and determine the com-
 “plaints of the wrongful acts of the king, the
 “queen, and their children, and particularly of
 “those against whom the subject could not
 “otherwise have common justice.” And by
 an ancient statute and custom, laudable and
 approved, the king was *once in the year* to
 convene his lords and *commons* to his court of
 parliament as to the highest court of the whole
 realm.

CHAP.VII.
 Knighton
 de Event.
 Angl. Lib.
 5. fol.2681.
 Col. 1. 2.

William was in a great measure obliged to
 yield to the vigour of the Saxon constitution,
 and to surname the representatives of the
 people in the fourth year of his reign, and this
 precedent is of the more important consequence
 as it forms the commencement of a represent-
 ative system different from that of his Saxon
 predecessors. The cities and boroughs were
 totally omitted, but twelve members were
 chosen for each county, to enact laws and to
 establish his doubtful title to the throne. “A
 “parliament was *elected*, and called together
 “in the fourth year of William the First, and
 “the manner of the *representation* was remark-
 “able. *Twelve representatives were elected* in
 “each county in the whole kingdom, and were

Lee de
 Greve, c.35.

CHAP.VII. “ sworn before the king, that they would to
 “ the best of their power, without departing
 “ either to the right or to the left from the path
 “ of truth, declare their laws and customs,
 “ nothing omitting, nothing adding, nothing
 “ changing by prevarication, &c. &c.”

Archaion.
159.

In this parliament the laws of Edward the Confessor were adopted and confirmed, but like all the other ordinances and promises of the oppressor were soon disregarded and violated.

Tyrrel,
vol. i.

The ancient privileges and liberties of the abbey of Westminster were confirmed in this year, (1071,) by a general synod or common council of the realm, and the conclusion to the charter sealed by the king expressly states,
 “ that there then appeared thereat many illus-
 “ trious persons and chief men of the kingdom
 “ whose names though omitted, yet were con-
 “ senters and witnesses to this confirmation of
 “ the privileges and liberties of that ancient
 “ monastery.” These were summoned by royal authority from various *counties* and *cities*.

Dugdale's
Orig. Jur.

This is an authority so convincing, that Sir William Dugdale has made use of it in his “ *Origines Juridiciales*,” to prove the antiquity of the commons of England in parliament.

The laws of the parliament of the fourth of William the First, are to be found in the an-

cient manuscripts in the Cottonian collection, CHAP.VII. and in that at Lambeth, also in Hoveden, and Lambard's *Archaionomia*.

William summoned a general council or parliament, in the year 1072, at Pennenden in Kent, to examine into, and determine the cause between, Lanfranc, Archbishop of Canterbury, and Odo, Bishop of Bayeux, Earl of Kent, the former having seized upon the rights of the church at Canterbury, when judgment was given for the archbishop, and confirmed by the assent of the *whole* kingdom, "*totius regni assensu.*" Selden's Tit. of Hon. p. 580.

In the fourteenth year of this king, at a *general council or parliament* held at Westminster, he confirmed by his charter the liberties of that church after he had subscribed his own name with the sign of the cross. In this charter he separates the ecclesiastical from the temporal jurisdiction with the advice of his archbishops, bishops, abbots, priors, and barons of the kingdom, preserving the shadow of the ancient constitution, but making all his acts of legislature with the consent of the barons.

In the nineteenth year of the conqueror, and A. D. 1086, as Florence of Worcester relates, he commanded that the bishops, abbots, earls, barons, and sheriffs, with their knights, should meet him at Salisbury, where, when they came, he made them and their knights swear fealty

CHAP. VII. to him against all men. This was undoubtedly a great council, to which not only the great men above mentioned, and the sheriffs were summoned, but knights or tenants by military service, who were undoubtedly *commoners*, so that this council did not consist of tenants in capite alone.

In reviewing the conduct of the Norman we find, that when he subverted the free exercise of liberty by controlling the persons and estates of the English, he violated the oath he had taken to observe the laws and customs of the land. The perjury, therefore, of this despot could not effectuate a subversion of our constitutional rights. The principle remained sacred, although the government was abandoned in favour of a new system. If he governed by right of will and relationship as he pretended, he could have no power to subject the persons or the property of a country whose laws he had sworn to observe. Had Edward the Confessor actually left him heir to the English throne, it could not imply any other than the right of governing according to the established law of the land. Even agreeable to his own feudal principles he was bound to hold the crown on the same tenure as was done by the testator. Seizing, therefore, the possessions of Englishmen, subjecting them to arbitrary contributions, depriving them of their legislative

right, and making the whole country subser- CHAP.VII.
vient to the interests, pleasure, and caprice, of
himself and his Norman banditti, he forfeited
even his pretensions to the royal tenure. The
crown was consequently escheated, or forfeited
to the people, who wanted the power, but not
the right, to re-assume their alienated exercise
of privileges, and enjoyment of possessions.

Every act of William's reign was, even ac-
cording to his own system of government, an
usurpation of power, and a subversion of na-
tional liberty. All his petty grants of privilege
were but partial and involuntary recognitions
of that nation's freedom he had endeavoured to
destroy. The wise and equally tempered go-
vernment of the Saxons secured its principle
from violence or corruption; but all laws that
were, and have since been founded on the
arbitrary government of the Norman tyrant, are
incroachments on the rights and privileges of
the people, for which they have a just appeal
to their constitution for redress.

CHAPTER VIII.

Right of Possession to Landed Property in the time of the Normans.

CHAP. VIII. THE constitution of *feuds* had its origin from the military policy of the Northern or Celtic nations, who, on the decline of the Roman empire, poured into all the countries of Europe. A division of the lands in every country they conquered was made among the superior officers of the army ; and these were subdivided in allotments to the inferior officers and the most deserving soldiers. These allotments were called *feoda*, feuds, fiefs, or fees, which in the northern tongue signifies a conditional stipend or reward. The condition was that the possessor should do service faithfully, both at home and in the wars, to him by whom they were given, for which purpose he took an oath of fealty, and if the stipulated service was not performed, the lands were again to revert to him who granted them.

Lands thus acquired, naturally engaged such as accepted them, to defend them ; and as they proceeded from the same right of conquest, no part could exist independent of the whole. In order to defend each other's possessions, govern-

Wright. 7.
Spelm.
Gloss. 216.
Bl. Comm.
2, 43.

ment, and for that purpose, subordination was necessary: every feodatory was called upon by the immediate lord of his fee, to defend him on every occasion: the lord was subordinate to his superior, and so upwards to the prince or general himself; and they were reciprocally bound, in their respective gradations, to protect the possessions they had given. Thus the feudal connection was established; and neither the civil constitution of the kingdom, nor the laws which regulate its landed property can be understood without some previous acquaintance with its nature and doctrine.

All lands of the realm, even those held by ecclesiastics and women, by a fundamental law of the Anglo-Saxons, were subjected to three public duties; the building or repairing of forts and castles; the constructions of bridges; and military service. The Normans introduced a new and different kind of military policy. England was so distributed by William the First, that the kingdom had always sixty thousand knights ready to serve at the command of the king, as circumstances might require. By the term *knights* must be understood those who held knights' fees, not persons who had obtained the order of knighthood. A knight's fee consisted of two hides of land, or two hides and a half; and a mesne tenant who had more than a single knight's fee, was called a *bavasar*, a term

Concil.
Easht. c. 22,
23. Con-
cil. Brit.
sub. ann.
1009.
Spelm.
Feuds, c. 8.

Orderic.
Vit. lib. 4.
p. 528.

Spelm. on
Feuds and
Tenures,
c. 27.

CHAP.
VIII.

Madox's
Hist. of the
Excheq.
c. 15,
p. 400.
Spelm.
remains.

applied to any vassal who held a military fief of a tenant in chief to the crown. He who held of a *bavator* was called a *balvasini*, and each of these might enfeoff another to hold of him by knight's service. Such gradations in this species of tenure were not common in the days of Henry the Second, and it was still more unusual for a fief to hold of the crown without any subinfeodation.

"*Barony*," according to Mr. Madox, "*was knight-service embaroned*, that is, knight's service enlarged, and erected into a barony, or made a barony at its first creation." Every nobleman was, therefore, by tenure, a soldier. His military duty was not confined within the kingdom, but extended abroad, at the command of the king; and not singly, but with such a number of knights as his barony, by its several fees, maintained. The spiritual barons were exempt from personal attendance, but were required to send knights, or military tenants, in proportion to the number of fees they possessed. By the Saxon constitution their lands had been charged with no military service, except for the actual defence of the kingdom, and which was, in general, ill performed on their part.

Lord Lyttel.
vol. iii.
p. 85.

Wilkins
and Lam-
bard, Leg.
Gal. 1, 58.

William ordered all earls, barons, knights, squires, and *all the freemen of the kingdom* to furnish themselves with arms and horses, *for the performance of the duties the tenures required.*

The freemen here mentioned are those who held their lands by any kind of military tenure, and not the tenants by free socage, or other free tenures not of a military nature. All the great landholders were soldiers, paid and maintained by the lands they possessed, as they likewise paid and maintained those freeholders of an inferior rank, who held knights' fees under them. The wealth of a state must, at some period, exhaust the strength of a mercenary army. But, although the introduction of such a military system could not fail to continue as fixed as the lands disposed of in this manner, and was ever ready to oppose foreign invasion, or intestine disturbance; and although composed of those who, by their property and rank, were interested to guard the liberty of the subject against the incroachments of the crown; still, the great power given to the barons, by military tenure, enabled ambitious and turbulent men to disturb the peace of their country, and to become, within the limits of their own domains, the most insupportable tyrants.

In comparing the constitution established by the Normans, with that of the Anglo-Saxons, we shall find the greatest difference arising between them, from many estates which were *allodial*, being made *feodal*; and from others, which were nearest to fiefs, and of a feodal nature, but *not lands of inheritance*, being ren-

Spelm. on
Feuds and
Tenures,
c. 5.

CHAP.
VIII.Spelman,
c. 5, & 10.ibid. c. 12.
Lord Lyttl.
vol. 3,
p. 97.Spelm. c. 3.
p. 7, and 9.Black.
Comm.

dered *hereditary*, and consequently subject to burthens to which they had not been hitherto liable. The hereditary estates of the Saxons are called by Spelman *thaneland*, which he makes synonymous to bocland, or charterland, and they were allodial, and not subject to any feudal tenure. Some of the greater and lesser thanes frequently held other lands of a feudal nature, by military service, yet, unlike the Norman feods, being granted only at will, or for a certain number of years, or, at most, for life or lives; in which they resembled the tenure of the lands of the common people called *folk-land*. Such grants were called *benefices*, a term expressive of their nature, which, by later usage, has been confined to church-livings. The *benefices* were made *hereditary fiefs* under William the Conqueror, and most of the bocland was converted into the same kind of tenure.

Bocland, or charterland, was held by deed under certain rents and free services, and from thence have arisen most of the freehold tenants who hold of particular manors, and owe suit and service to the same. These lands, held by no assurance in writing, but distributed among the common folk, or people, at the pleasure of the lord, and resumed at his pleasure, were called *folk-land*.

When we consider the change with regard to the possessors of *bocland* alone, it is evident

they were sufferers by it. Formerly they had an absolute property in their estates, which they could even dispose of by will, but they now held them under the king, or of some *mesne lord* under him, inalienable and limited to their eldest sons, besides the obligation imposed on them and their heirs to acknowledge their dependence on the lords of the fiefs. In regard to the possessors of *beneficiary* estates, however repugnant the burthens incidental to their new tenure might be, the *perpetuity* of their fiefs, thus acquired, was confirmed to them and their families. When, therefore, the same persons had estates of both kinds, the alteration made in the *bocland*, was compensated by the inheritance obtained in the *benefice*; and there is reason to believe this was the case with many of the English. The Normans could feel it no grievance to hold their lands in England on the same terms they held their estates in Normandy.

CHAP.
VIII.

Spelm. c. 5.
and 23.
Somner.
lib. 2, c. 5.
Lord Lyttl.
vol. 3,
p. 97.

Lord Lyttel.
vol. 3, p. 42.

The feudal system was not introduced in its full force immediately after the Conquest, nor by the will and arbitrary power of the conqueror, but was gradually established by the Norman barons in such portions of land as they received in reward of their services, and afterwards universally consented to by the great council of the nation.

Bl. Comm.

From the slaughter of the English nobility at

CHAP.
VIII.

the battle of Hastings, and from the frequent insurrections of the survivors, William was enabled to reward his Norman followers with extensive possessions from numerous forfeitures. Their attachment to the feudal system, under which they had long lived, with the king's commendation of its policy to the English as the best mode of putting themselves on a military footing, and preventing any future attempts from the continent, were, probably, the cause that effected its establishment by law. The time of this great revolution in the landed property of the kingdom cannot be exactly ascertained.

Chron.
Sax. A. D.
1085.

In the nineteenth year of William's reign a Danish invasion was apprehended. The military constitution of the Saxons being laid aside, and no other introduced in its stead, the kingdom was without defence. The king brought over from Normandy and Brittany a large force, who were quartered on every landholder, to the great oppression of the people. When invasion was no longer apprehended, the king held a great council to inquire into the state of the nation; and a general survey then took place, which was finished the next year; and formed the basis of that work which has since been called Domesday Book. Shortly afterwards the king was attended by all the nobility at Sarum, when the principal landholders submitted their lands

Chron.
Sax.
Bl. Comm.

to the yoke of military tenure, became the vassals of the King, and did homage and fealty to his person. CHAP.
VIII.

Thus was the first introduction of the feudal system sanctioned by the legislature. The terms of this law are entirely feudal. It requires the oath of fealty, which, in the sense of the feodists, made every one who took it a tenant or vassal, and the vassals obliged themselves to defend their lord's possessions against every incroachment. The legal establishment of this system also exacted the performance of the military feudal services as ordained by the general council. Wilk. 228.
Wright's
Tenures,
c. 58. 66.

Hence it became a fundamental and necessary principle (although a mere fiction) of the English tenures, “that the king is the universal lord
“and proprietor of all the lands in his kingdom,
“and that no man doth or can possess any part
“of it, but what has, mediately or immediately,
“been derived from him as a gift, to be held
“upon feudal services.” By thus consenting to the introduction of the feudal tenures, our English ancestors probably meant no more than to put the kingdom in a state of defence, by establishing a military system, and in respect of their lands to oblige themselves to maintain the king's title and territories with the same fealty as if they had received their possessions as pure and beneficial feodatories, from his bounty under M. 24 Edw.
III., 65.

CHAP. these express conditions. The Norman inter-
 VIII. preters, however, gave a different construction
 Bl. Comm. to this proceeding, introducing not only the
 rigorous doctrines prevalent in Normandy, but
 also such fruits and dependencies, such hardships
 and services, as were unknown to any other
 nation, and as if the English had, in fact as well
 as theory, owed every thing they possessed to
 the bounty of the sovereign lord.

Spelm.
 Feuds,
 cap. 28.

Our ancestors, therefore, were not beneficia-
 ries, but consented to this fictitious tenure from
 Wright, 81. the crown, as the basis of a military discipline,
 whilst they looked upon those deductions as
 grievous impositions, and arbitrary conclusions
 from principles, that had no foundation in truth.
 Black. The Conqueror, and his son, William Rufus,
 Comm. inflicted all the severity and oppression of the
 feudal doctrines: when their successor, Henry
 the First, laid his pretensions to the crown, he
 found it, however, expedient to promise a resti-
 tution of the laws of Edward the Confessor, or
 ancient system of the Saxons. In the first year
 of his reign he granted a charter by which he
 gave up the greater grievances, but still reserved
 the fiction of feudal tenures for the same military
 purposes that prompted his father to introduce
 it. But this charter was gradually frittered
 away; the former oppressions were renewed and
 aggravated by himself and succeeding monarchs,
 till they became so intolerable, that in the reign



of King John, the barons, or chief feodatories, rose up in arms against the sovereign, and compelled him, at Runemeed, to assent to the great charter of English liberty, which Henry the Third, with some alterations, confirmed.

As the military tenure, or that by knight-service, consisted of what were deemed the most free and honorable services, but in their nature were unavoidably uncertain, as to the time of performance, the second species of tenure, or *freesocage*, consisted also of free and honorable services, but were reduced to an absolute certainty. This tenure subsists to this day, and in it, since the statute of Charles the Second, almost every other species of tenure has been merged.

Black.
Comm.

Socage, in its most extensive signification, denotes a tenure by any certain and determinate service, and is derived from the Saxon word *soc*, which means liberty or privilege. Britton, describing lands in socage tenure under the name of *fraunke ferme*, says that they are “lands and tenements whereof the nature of the fee is changed by feoffment out of *chivalry* for *certain yearly* services, and in respect whereof neither homage, ward, marriage, or relief can be demanded.”

Somn.
Gavelk.
138.

From the above etymon of the word, it is probable that socage tenures are the relics of Saxon liberty retained by such as had neither

CHAP.
VIII.

forfeited them or had been compelled to exchange them for the tenure of knight-service; and those who thus preserved their lands from the innovations of the Norman conqueror were said to hold them in *free* and *common* socage.

Glanv.
lib. 7. c. 3.
Lytt. 162,
163.

Although this tenure includes under it various methods of holding free lands, we shall only notice that which is analogous to the present work. Among the tenures is that in *burgage*, described by Glanvil to be but tenure in socage; and it is where the king or other person is lord of an ancient borough, in which the tenements are held by a rent certain. And this is only a kind of town socage; as common socage, by which other lands are held, is usually of a rural nature. A borough is distinguished from other towns by the right of sending members to parliament; and where the right of election is by burgage-tenure, it affords a decided proof of the antiquity of the borough. Burgage-tenure, therefore, is where houses or lands, formerly the site of houses in an ancient borough, are held of some lord in common socage, by a certain established rent. These have withstood the shock of Norman innovation, and are a vestige of Saxon liberty, partaking strongly of the feudal nature. Feuds were not unknown among the Saxons, though they did not constitute the military policy, nor were formed into such an arbitrary system as among the Nor-

mans, and it is reasonable to suppose that soc-
age-tenure existed in much the same state pre-
vious and subsequent to the Conquest.

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VIII.

The feudal system introduced by the Nor-
mans, while it rendered the constitution more
aristocratical, subjected the inferior orders of
freemen to acts of oppression unknown in the
time of the Saxons. The whole policy of the
military tenure was better adapted to its origi-
nal purpose, to maintain conquest in countries
not entirely subdued, or which might be ex-
posed, by their situation, to continual warfare,
than to promote that tranquillity, which, being
the principal benefit derived to mankind from
social order and well regulated government, can
only be supported by the improvement of civil
society.

CHAPTER IX.

State of the Representative System from the Reign of William the First to Henry the Third, inclusive.

CHAP. IX.



DURING the reign of William Rufus, who acted upon the same principles as his father, no considerable change took place. He merits not to be ranked amongst legislators, although he held parliaments at Winchester and Rockingham, where he promised to place the government on the same footing as it stood before the Conquest, and to rule according to the ancient laws of the realm, yet he never fulfilled such engagements; but by repeated acts of oppression rendered himself equally odious to the Normans and English.

Eadmer Ingulphus
Chron. Sax.
Ord. Vit. de
W. III.

Lord Lyt-
telton, Hist.
Hen. II.
vol. i. p. 89.

Within the jurisdiction, and under the power of Ralph Hambard, a Norman of mean extraction whom he had installed in the see of Durham, the *people*, instead of any alleviation of their grievances, were harassed by the most grievous oppression. The nation at large felt more insupportably than ever what heavy burthens the feudal laws could by arbitrary construction impose on the subject. The effects

of these indeed fell upon the great Norman lords ; but there the evil did not entirely rest. CHAP. IX. Whatever demands were made by the king on them, they in return made on their own vassals, and claimed a similar power with him which they equally abused. The concatenation, by which the several parts of the feudal system were joined together, became a chain of despotic oppression, under which all suffered, but the *people* most. The rapacity of the court, not content with these methods of acquiring wealth ; every thing was sold, even justice itself, by the king and his ministers : and when all other means were exhausted, confiscations were sought under various pretexts, the last and worst resource of a prodigal tyrant.

The misery of England was complete ; the nation, at once a prey to licentiousness as well as tyranny, suffered under the disorders of anarchy and the oppressions of arbitrary power. But the life of this prince was, fortunately, too short to extend corruption to the body of the people.

Henry the First, his successor, was *elected* A.D. 1100. king of England by the great council. He had given indications of a talent for governing, and felt that the surest method to conciliate the favour of the people would be to hold out such national benefits as should make his interest the same as that of the public. Their submission under the tyranny of the first Norman kings

CHAP. IX. arose from circumstances of a transient nature,  not to any rooted or permanent cause. They still retained a passion for liberty alike natural to the Normans and English. The mutual distrust they entertained for each other, which principally prevented their uniting in defence of their rights, yielded to a strong and equal desire in both to reduce the regal authority to such limitations, as, without destroying the feudal system, might alleviate the heavy burthens with which it was loaded, and put an end to that despotism which desolated the land.

Vid. Vit. ct
Matth. Pa-
ris, sub ann.
1100.

The nation resolved to give the crown to a prince, who should acquire and hold it under no other claim than a *compact* with his people, and make the title of king security for the liberty of the subject. To give that liberty a more solid and lasting establishment, they demanded a *charter*, which Henry granted soon after his coronation, as he had sworn to do. By this he restored the Saxon laws which existed under Edward the Confessor, but with such “*emendations as had been made in them by his father, with the advice of his parliament;*” annulling at the same time “*all evil customs and illegal exactions, by which the realm had been unjustly oppressed.*” The redress of some of the grievances specified in the charter was expressly exacted; it also contained considerable mitigations of those feudal rights claimed

Hagustald.
p. 310, 311.

by the king over his tenants, and by them over theirs, which either had become burthensome from their nature, or been made so by an abusive extension. All the liberty consistent with the safety and interest of the lord in his fief, was allowed to the vassal by this charter, and the profits due to the former settled by a determinate and moderate law. CHAP. IX.

This charter was transcribed, one for every county, each duplicate sealed, and one sent to be preserved in the chief abbey of the different counties, and the sheriffs attended to lay out the charters according to order. One of our greatest antiquaries, Sir Henry Spelman, observes, “that it was the original of King John’s “Magna Charta, containing most of the articles “of it, either particularly expressed or in general, under the confirmation it gives to the “laws of Edward the Confessor.” From the acquisition of this charter is dated the union of the Normans with the English, whose interests were blended under one common claim of national right. But no laws or privileges can render national freedom secure, if the spirit and administration of government is in the smallest degree hostile. The conduct of Henry entirely corresponded with his engagements. He took off all the burthens that had been imposed on his subjects, remitted all the debts due to the crown, and rendered himself still more popular

Selden's
Tit. of Hon.
702.
Gurdon
Parl. vol. i.
p. 61.

Spelman's
Gloss. under the
words Mag-
na Charta.

Hagustald.
p. 310, 311.
Ord. Vit.
b. x. sub.
ann. 1100.
Chron. Sax.
Malmsb.
Eadm. sub
eqd. ann.

CHAP. IX. by punishing all those who had abused the power vested in them, particularly Ralph Flambard, the most acceptable sacrifice he could make to the public resentment. He freed the people from all oppressive and arbitrary exactions of the church, and was constantly supported by his parliament, and even with the concurrence of the English bishops themselves.

King Stephen's reign affords little matter for a history of parliament. He was *elected* king, and the bishops swore fealty to him as long as he should preserve the liberty and discipline of the church. His first charter, "confirms the
" liberties and good laws which his uncle King
" Henry gave and granted, and all good laws
" and customs which the nation had enjoyed in
" the time of Edward the Confessor." But he soon broke those engagements, and his reign was a continued series of intestine commotion and horror.

The very essence of feudal allegiance, and of all government and lawful subjection, implies a dissolution of all obligations on the part of the subject, when the sovereign violates that compact in which the relation consists: and it is inconsistent with reason and good policy to suffer the oaths of allegiance to be limited by conditions, and declarations that they should not be binding unless such conditions were observed, as Stephen had permitted to be done in the homage he received

from the bishops: when Henry the Second CHAP. IX. ascended the throne, he would not admit of such expressions in the oaths to him, but restored them to their customary form. The supports of his throne were the laws of his country and the love of his people. He raised the fallen glory of the kingdom by restoring union among his people, by allaying all dissensions, quieting all fears, and extinguishing the remembrance of former divisions.

Soon after his coronation, Henry met his great council, and advised with them relative to the state of the kingdom. He confirmed the laws of King Edward, and swore to maintain them. His parliaments of Westminster, Clarendon, and Northampton, were called to redress the complaints of the people against the oppressions of the clergy. The king, by the advice of his parliament at Northampton, instituted justices itinerant, in the tenth year of his reign, Guv. Chron. sub ann. 1155. Neubrigensis, b. 11. c. 1, 2, 3. A. D. 1164, and divided the kingdom into six circuits. The parliament at Northampton was held there the twenty-fifth day of January, 1164, and the parliament at Nottingham, at Easter, 1176, when he divided the nation into four parts, and appointed to each wise men to do justice in the land. Epinomis, 15. Hist. Com. Law, 141. Daniel, 104. Gurdon, Parl. vol. i. p. 135.

The trial by grand assize, by twelve knights or freemen, was instituted by Henry, instead of the trial by battle or single combat. The writ Hovedon, edit. Savil, 549.

CHAP. IX. to the sheriff, called "*Magna assisa eligenda*,"
was to return four knights before the justices, who on their oath returned twelve knights of the vicinage to try the *mise* in a writ of right. *Mise* is a term of law appropriated to a writ of right, so called because both parties have put themselves upon the mere right to be tried by the grand assize.

In the time of the two Williams, the king's rents were paid in kind, to the inconvenience of the tenants who lived remote from the king's residence. In the time of Henry the First, these provisions were rated at certain prices, and most of them paid in money by consent of parliament; and as money was more abundant in the reign of Henry the Second, it then became nearly universal to pay rents in money.

Hume,
vol. i. 466.

The Norman and other foreign families established, had now completely incorporated themselves with the English, whom they at first oppressed and despised; they no longer thought they required the protection of the crown for the enjoyment of their possessions, or considered their tenure as precarious. They aspired to liberty and independence, and desired to restrain those exorbitant prerogatives and arbitrary practices, which war and conquest had obliged them to indulge in their monarch. The recollection of a more equal government under the Saxon princes diffused more extensively the

spirit of liberty, and made the barons desirous of more independence to themselves, and disposed to indulge it to the people. And it was not long before this secret revolution in the sentiments of men produced, first, convulsions in the state, then an evident alteration in the maxims of government. CHAP. IX.

Henry was the first prince who levied a tax on the moveables or personal estates of his subjects. The zeal for the holy wars gave rise to this innovation ; and this species of taxation formed a precedent, which was followed in succeeding reigns for supplying the necessities of the crown.

The two eldest sons of Henry dying in his life-time without issue, he prevailed on his parliament to confirm the succession to Richard, his third son, being willing to have a parliamentary sanction to supply the deficiency of his birth. Richard the First held five parliaments of bishops and barons, but no statutes made in his time are found either in rolls or in history, but many edicts and constitutions were made by him, without any mention of his enacting them with the advice and consent of his barons. He instituted a code of naval laws, and raised aids and taxes without the authority of parliament, although he had sworn at his coronation to observe the old laws, and to enact good new ones.

Inspect. of
Long Parl.
21.
Hist. Com.
Law.

CHAP. IX.

State Tracts
387.
Gurdon
Parl. vol. i.
139.

King John, on his accession to the throne, swore to abolish all unjust laws, and to confirm such good ones as his barons in parliament should suggest. In the charters granted in the first year of his reign, he acknowledged to *owe the crown to the election and favour of the people*, “*jure hereditario et mediante tam cleri quam populi consensu et favore.*”

Tit. Hon.
707.

Hovedon.

In the second year of his reign he held a parliament, wherein was determined the great controversy about the barony that William Mowbray claimed against William Stutvil—*concilio regni et voluntate regis*. In the fifth year of his reign, “*convenerunt ad colloquium apud Oxoniam rex et magnates Angliæ,*”—the king and his nobles assembled at Oxford; and in the sixth year a parliament was held, at which the children of the barons were required as hostages for their allegiance.

In the sixth year of the reign of King John, in a record cited by Mr. Selden in his Titles of Honour, we find certain laws made by this king for the defence of the kingdom, by the *common assent* of the archbishops, bishops, earls, barons, omniumque fidelium nostrorum Angliæ, viz. of *all his faithful subjects*, by which is evidently meant the *representatives* of the commons; and the annals of Waverly, under the year 1207, tell us, that there was a great council held this year at London, about the begin-

ning of January, at which were present the CHAP. IX.
 bishops, abbots, priors, earls, and barons, &c. ~~~~~
 magnates regni, viz. the great men of the king-
 dom; wherein the king required the bishops
 and abbots to permit the beneficed clergy to
 give him a certain part of their yearly income.
 By the magnates regni, or great men of the king-
 dom, being placed after barons, the knights
 of the shires may very well be understood.

Among the records of the exchequer, in the reign of Edward the First, the knights of shires and barons of the Cinque Ports are called mag-
 nates; and in Rastall's Statutes, 15 Edw. III. c. 4, there are mentioned the prelates, earls, barons, knights, and other *grandz*, great men of every county. The statute de Servilientibus of the 25th Edw. III. was also made by the assent of the prelates, earls, barons, and other great men of the community then assembled. In the statute 27th Edw. III. the ordinances of the staple are said to be made, after good deliberation had with the prelates, earls, barons, and great men of the counties;—for each county one, and as many for the commons, and cities and boroughs of the realm.

Inter com-
 munia Bre-
 via Deter.
 estrin. ann.
 34 Ed. I.

The Norman kings having made perpetual incroachments on the barons, whom they had raised to power and possession on the wreck of English property, were obliged at last to agree to a limitation of their tyranny. The con-

CHAP. IX.  firmation of the liberties of the people by Henry the First, Stephen, and Henry the Second, being violated by each respective sovereign, the barons had the best pretence for restraining the despotism of their reigns.

Dr. Johnson's Tour,
174.

Thus, under the plea of establishing national right, they confirmed the feudal system, and sanctioned their own power over their vassals, while they secured themselves from the arbitrary will of their despotic superiors. This was the period of "the full prevalence of the feudal institution, when violence desolated the world."

With this view, the great charter was obtained from King John at Runemede. And so far was the general tenor of *Magna Charta* from its avowed principle of "giving," or "granting," liberty to the people, that it did not even recognize any one essential right, except what was under the controul of feudal oppression. Those who read *Magna Charta* will find every chapter, except the twenty-ninth, conferring every species of feudal exaction. According to Blackstone, it only lopped off the luxuriance of those laws of violation, and thus strengthened the general stem.

Although the barons were jealous of their rights, yet they too much approved the feudal system to destroy it, by reverting to the ancient constitution. Possessing considerable power and property, they mocked the people with a

prospect of liberty they were not to realize. CHAP. IX.
But however, in their zeal to secure themselves from the violence of the sovereign, they could not entirely exclude the people from some share of their own protection. To this may be attributed that chapter (twenty-ninth) which does not grant, but recognizes the ancient liberty, that “no freemen shall be taken or imprisoned, “or dispossessed of his freehold or liberties, or “free customs, or be outlawed, or exiled, or “any otherwise destroyed: nor will we pass “upon him, nor condemn him, but by lawful “judgment of his peers, or by the law of the “land. We will sell to no man, we will not “deny or defer to any man either justice or “right.”

The barons providing in this manner against the arbitrary persecutions they had suffered, the security was necessarily extended to every freeman. To have confined the letter or spirit of charter to themselves would have been a violation of that right on which they founded the justice of their own preservation. Political benefit was thus derived from personal oppression. Had they not been the objects of wanton tyranny, this recognition of a nation's right had never been obtained.

Although this part of *Magna Charta* revived a very valuable portion of the constitution, yet it did not restore the people to the more essen-

CHAP IX.  tial right of legislation. Not a word in the whole charter is found that can be construed into the least acknowledgment of this indispensable requisite to the inheritance of freedom. The preamble to the charter presumes to have “*given and granted* to all archbishops, bishops, “*abbots, priors, earls, barons, and to all free-* “*men* of this our realm, *these liberties follow-* “*ing*, to be kept in our kingdom of England “for ever.” By the words “these liberties following,” it is evident the nature of the charter was not a recognition of general right—but a presumptive dispensation of partial and specified privilege. Therefore, although it only restored some freedom, yet the people had an equal claim to those franchises that were still withheld from their possession. The preamble and the charter itself, acknowledging there were freemen, prove they ought to have been admitted to the full enjoyment of such rights as on which liberty is only founded, and can be preserved. As they were not, this charter, of which such boast has been made, was a general confirmation of feudal violence, with the exception of a very partial restoration of national liberty. And for this scanty bounty the archbishops, bishops, abbots, priors, earls, barons, knights, freeholders, and other subjects, granted a fifteenth part of their personal property.

The title to the Great Charter is still on re-

cord, and runs thus: "The agreement between CHAP. IX.
 " King John on the one part, and Robert Fitz-
 " walter, marshal of the army of God and the
 " holy church of England, and Richard de Clare, Rot. Clau.
 " with five other earls and six barons therein 17 Johan.
 " named, together with other earls, barons, and in 2 anno.
 " *freemen* * of the whole kingdom, on the other
 " part."

And although the assembly was not called by the king's summons, but met there against his will, yet it is looked upon by all our historians as a common council of the kingdom, consisting of the nobility and freemen of England, who were then present in their own persons, to consent and accept of the charter which the king was then ready to seal and execute.

* *Liberi homines.*

CHAPTER X.

*State of the Representative System from the Reign of
Henry the Third.*

CHAP. X.



MAGNA CHARTA was cancelled two years after its confirmation by Henry the Third, at the pernicious instigation of his favourites, and particularly of Hubert de Burgh, whom he made chief justice. To aid his inordinate ambition, he persuaded the king that he might annul the charter his father had made, as well as his own Great Charter and *Charta de Foresta*. For the first, he said, was made while his father was in duress, and the latter before he himself was of age. As kings want little persuasion to release themselves from all restraints on their will and pleasure, he adopted the doctrine, and in the eleventh year of his reign, being then of full age, unjustly cancelled both *Magna Charta* and *Charta de Foresta*; but as no pretence whatever can sanction a violation of national justice and freedom, the rights of Englishmen had still their claim.

Before the making of the Charter of the Forest, the people were liable to have the king enter on



the lands of his subjects, and to turn them into a forest. Among the grievances complained of in the reign of William the First, none gave more dissatisfaction than the oppressive severity of his forest laws. He was not content with the vast tracts of forest that he found in this kingdom, but he made a new one in Hampshire, by laying waste a country of sixty miles in extent, dispersing the inhabitants, destroying their dwellings, and, much as he affected a regard for religion, not even sparing the churches. One of the Norman historians speaks with horror of these acts of cruelty. A hundred thousand men, women, and children, perished by famine in the counties that were desolated by the merciless Norman. Where large and flourishing towns had existed, where had been hamlets of peaceful industry, nothing was seen but immense tracts of uncultivated land. Even his amusements were pleas for the most grievous oppression and cruelty. Whoever took a buck or doe in his forests was punished with loss of sight. William Rufus caused fifty rich men to be seized, and accused of taking and killing his deer, which they denying, were sentenced to clear themselves by *fiery ordeal*. Henry the First punished such trespassers on his forests with castration and loss of sight. It would be endless to enumerate the variety of grievances the people endured before the charter was framed.

Lord Lyttel.
vol. i. p. 57.

Ord. Vet.
b. iv. 514,
515.

Ingul. 79.

CHAP. X. We shall only add, that the numerous courts that were held in these several forests, gave a multitude of officers the power of oppression and extortion. No man could keep a dog near any of the forests, without cutting off three claws of the fore feet, under the penalty of being amerced three shillings every year. The foresters keeping houses of public resort, compelled the neighbouring people, on pain of their displeasure, to waste their health and substance in riot and drunkenness. Thus were the people debased in their morals, and impoverished in their property, to feed those vermin of tyrant production. No man could enjoy his common without presenting lambs, pigs, corn, and hay, to those mercenary foresters, who exacted toll not only on those who came with carts and horses loaded, but generally of every man who travelled through lands, of which he had been before wrongfully dispossessed.

To remedy these and other grievances, the *Charta de Foresta* was made, which not only prevented the freeman's liberty from unjust seizure, but also allowed them the general privilege of hawking, and to archbishops, bishops, earls, or barons, the right of killing one portion of the king's deer, provided the forester was present, who caused a horn to be blown, to certify he meant not to steal the deer he came to kill. By this charter all woods, except

demesne woods, that had been made forests by Richard the First, and John, were disforested and restored to the heirs of those from whom they had been arbitrarily taken. And as no landed property was secure from this species of depredation, this charter has been considered as one of the greatest national triumphs over Norman tyranny. It is to be wished our game laws were not a species of that oppression which caused the people to recover by this charter, as many, and as great privileges as they did by *Magna Charta*. It is not meant to be asserted that the game laws are express violations of the *Charta de Foresta*, although they are certainly derogatory to its principle.

The parliaments from William the First to the time of King John suffered no opportunity to escape of obtaining from the kings the confirmation of the Saxon laws, and their promise to make them the rule of their government. These made no scruple to swear at their coronations to observe the laws, but at the same time they interpreted them as they pleased; and after the *Magna Charta* of King John and that of Henry the Third, there were frequent contests between Henry and his barons about the interpretation of the charters. For during these periods of arbitrary government, the kings had caused the people's right to perpetual legislation to be dependent on their will. Par-

CHAP. X.

Bracton,
34.

CHAP. X.  liaments were summoned at their discretion, and composed of such persons as were in their immediate interest. Thus was the Saxon witenagemote, which was once the source and protection of national prosperity, changed to councils, that were only assembled for the purpose of giving sanction to Norman oppression. These assemblies were composed of ambitious churchmen, intriguing nobility, and dependent knights, citizens, and burgesses, who holding their tenures immediately under the king himself, or some baron in his interest, were obliged to consult royal pleasure more than their own welfare. National prosperity was, therefore, sacrificed to the convenience of the monarch ; and the people, thus deprived of their rights, lost that patriotic zeal by which they could only be regained. Having no property but what was at the absolute disposal of their lords or their sovereigns, they were not inclined to take any share in a government by which they had been despoiled. Although the principle of chartering boroughs affected to exempt those who held of the king by burgage-tenure from precarious tolls, &c., on paying a certain fee farm rent, yet while the tenure of knight service lasted, the property of the people was entirely at the mercy of their superiors. Relief, aids, primer seisins, wardships, &c., were the feudal pretences for their arbitrary

system of plunder. The taleage, which is so CHAP. X.
called from the Norman word *tailler*, to cut or
take away any part of a man's estate, and the
maletot, *i. e.* an evil or unjust toll, were among
the train of Norman exactions, which sub-
mitted the property of the most free to regal
plunders. To the oppressive tenure of knight
service, which Lyttelton defines to have been
only distinguished from free socage by the
uncertainty of service or *escuage*, which was
an arbitrary tax levied on those who refused
to attend their lords to the wars, &c. the
kings of England were never without a pre-
tence for impoverishing the subject. Black-
stone is therefore right in saying that the
statute of the 12th of Charles the Second,
which destroyed this system of national extor-
tion, restored more liberty to the people than
the so much boasted *Magna Charta*.

The free, entire, and equal representation of
the people being suspended for one limited and
packed at the will of the king, does not prove
the total destruction of the ancient system;
though this perversion of the original liberties
of the people is the chief argument since used
in favour of despotism. But such is as falla-
cious as unjust; for though arbitrary measures,
corruption, and treachery, may cause a tem-
porary change, yet the imprescriptible rights of
a free people can never be bartered.

CHAP. X.

Some feudal customs and prerogatives of the crown arising from that policy, the use and exercise, and abuses of which frequent complaints had been made during the reign of Henry the Second, were afterwards limited, or taken away by express laws, and it is observed by Lord Coke, that “many acts made in the reign of Henry the Third, do refer to his reign that matters should be put in use as they were of right accustomed in his time.” Glanville, in the preface of the Treatise on the Civil Government of this King says, “all the proceedings are grounded upon the laws of the kingdom, *or reasonable customs established by long usage.*”

Much diversity of opinion has existed as to what orders of men composed the parliament in those times. But it has been well ascertained that the right of the commons to a share in the legislature and national councils, even according to the hypothesis of those who are most unfavorable to them, has antiquity sufficient to give it all the establishment which can be derived from long custom, and all the reverence and authority which time and experience can add, in the opinions of men, to the speculative reason and fitness of wise institutions.

The custom of assembling the mickle-gemote on open plains had been disused under the

Norman government, nor is there a single in- CHAP. X.
 stance to be found of its revival till that extra-
 ordinary meeting in the reign of King John ;
 all the parliaments or great councils having
 been held in churches, abbey, and royal castles.
 If the right of the householders continued, the
 greater part must have exercised it, not per-
 sonally, as in ancient times, but by represent-
 ation. And although we learn that in the
 fifteenth year of King John, not only the greater
 barons, but all the inferior tenants of the crown,
 claimed a right to be summoned to parliament
 by particular writs, yet these did not send any
 representative to serve for them ; nor can we
 suppose these constituted all the householders
 of the kingdom—under that denomination were
 included all who held of the barons by knight
 service, or free socage, and all the possessors of
 allodial estates, with all the free inhabitants of
 cities and boroughs not holding of the crown.
 The number of those was too great to be con-
 tained in any building, however large, and
 therefore they must either have been individu-
 ally excluded from parliament, or were present by
 representation. But there is a writ of summons
 directed to the sheriffs of the counties of Bedford
 and Buckingham, requiring two knights to be
 sent for each of these counties, still extant in the
 close roll of the thirty-eighth of Henry the
 Third. And a clause in the great charter of

Brady's
 Ans. to Pe-
 tit, 40—62.

CHAP. X. the same king declared, “ that together with
“ the spiritual and temporal barons, other inferior householders, *et omnes de regno*,” which words comprehend *the whole commonalty of the realm*, granted to the king the fifteenth part of all their moveables in return for liberties accorded to them in that charter.

From the time of the Saxon heptarchy to the reign of Charles the First, the history of England furnishes no trace of any dissensions between the barons and the commons, relative to the question of representation. Though the barons engaged in civil wars on account of disputes between the royal prerogative and the liberties of the nation, in which they were supported by the arms of the commons. The right of the commons must have been incontestibly established by custom, and interwoven into the original frame of our government; and any advantage which the regal or the popular powers obtained in any of these contests has been distinctly marked by historians of those times.

It has been asserted by legal authorities, supposed the most respectable, that representative parliaments had never existed in this country prior to the forty-ninth of Henry the Third. But the charters, custumal, and records of the cinque ports positively state that parliaments existed in the eleventh year of that reign, and that a record of the return, and the names of

the representatives for the several cinque ports CHAP. X.
are still in existence. Many other proofs of
equal authority can be adduced to affirm the
parliaments existed at periods antecedent, and
what is of more importance, that their duration
was only for *one session*, and that the *right of*
election was *universally* in the householders.

Nobility at this time was attached to the possession of certain property, as Arundel Castle at this day gives the title of Earl to the Duke of Norfolk; a nobility by letters patent on parchment was then unknown. The first nobleman thus created was Beauchamp, Baron of Kidderminster, made by Edward the First; Matilda, daughter of Henry the First, converted the office of ealdorman of a county into an earldom; Edward the Third created the first duke, and Richard the Second the first marquis and viscount.

In the reigns of Rufus and Henry the First, Ead. 67.
none were members of parliament but the tenants *in capite*, whose possessions being much extended, did not make the parliament to consist of a tumultuous number; till Stephen, during his wars with the Empress Maude and the barons, as baronies escheated, divided them into smaller tenancies, and granted them to his followers, who holding these limited tenancies *in chief* of the king, produced the distinction of fees of the old, and of the new feoffment.

CHAP. X. King John in a similar manner divided the
 baronies as they came to his hands by attain-
 ders or escheats; which increased the baronies
 so much as to be termed by Camden “*seditiosa*
 “*et turbulenta multitudo*,” a seditious and
 turbulent multitude, as was the parliament of
 Oxford in the 47th of Henry the Third.

Camd. Brit.
169.

Cam.
Apolog. 11.

Brady,
Append.
121.

Mag. Char.
Joan. c. 17.

Mag. Char.
H. 3. c. 31.

Tit. Hon.
711—717.

Prior to the time of King John many distinctions of barons existed. There were *barones majores, et barones minores*, (greater and lesser barons,) *barones regni et barones regis*, (barons of the kingdom and barons of the king,) and barons of the old and new feoffment. The great barons when they compelled King John to grant his charter at Runemede, obtained a more extended privilege to themselves in these words, “*de scutagiis assidendis, submoneri faciemus archiepiscopos, episcopos, abbates, et majores barones regni sigillatim perliteras nostras, et præterea faciemus submoneri in generali per vicecomites et ballivos nostros, omnes alios qui in capite tenent de nobis, &c.*”
We shall cause to be summoned, by our letters, the archbishops, bishops, abbots, and the greater barons of the kingdom, one by one, to assess the scutage; and besides, we shall cause to be summoned in general assembly, by our sheriffs and bailiffs, all who hold under us DE CAPITE, &c.

Afterwards the great barons obtained a further privilege that none should come to parliament but such as had special writs directed

to them ; so there were two sorts of barons—
 barons by investiture, writ, and tenure, and
 barons by writ only, which last were only barons
 peers summoned at the king's pleasure ; and
 from that time no more great barons were made
 but by investiture in parliament, till the time
 of Richard the Second.

CHAP. X.

Brady's
Tracts, 76.

The barons by writ only, who did not possess
 an entire barony in tenure, but part of a di-
 vided barony or none, and who paid tenths
 with the great barons in proportion to their
 tenure, were the barons peers so often found
 in summons to parliament by the titles of
autres nobles, grandes, seigneurs, bannerets,
and chivalers. These were summoned at the
 pleasure of the king, and sometimes expressed
 in the writs, *hac vice tantum*, but the king by
 Magna Charta was bound to summon the great
 barons. The original great Norman barons
 were so by tenure only ; their heirs were in-
 vested into the honours of their predecessors
 with the ceremony of the sword and robe of
 dignity, which was not a new creation, but
 only an admission into the honours of their
 immediate ancestors.

Parl. Elsing.
46.

The baron by writ only was temporary and
 personal, the writ not ennobling his blood.
 The *barones minores* summoned to parliament
 after the battle of Evesham, were such as the
 king esteemed for their learning and wisdom,

Par. Sum-
mons, Pre-
face.

CHAP. X. whose advice was to be of service to the king, and being once summoned by writ, generally retained the title during life; but his son or successor was or was not summoned to parliament at the option of the king. And several other peers were summoned in like manner, and their children and successors omitted, if they did not equal their predecessors in wisdom, abilities, valour, or any other virtuous qualification.

Antiq.
Parl. 83—
87.

Parl. Elsing.
46—13.

Brady's
Tracts, 76.

Hence it appears that summons to parliament by particular writ did not convey hereditary nobility. It arose from the original grants of the *Saxon Thanelands* to the first great Norman barons, and afterwards by investiture with sword and robe, together with a charter expressing the degree of nobility. Investiture made the hereditary nobleman, and charter distinguished the title whether of earl or baron.

From the overthrow of the Saxon constitution, to the reign of Henry the Third, there appears to have been no other contest with the crown, than that of this new-fangled aristocracy, for the unlimited exercise of power. The most sanguinary conflicts terminated in the alternate success of each party; the people had no other concern in them but being compelled to shed their blood in the quarrels of those, whose slaves they had the misfortune to be. The

king, to have a greater facility in oppressing his subjects, introduced an army of French and Flemings, and distributed among foreigners places of the greatest trust and emolument.

CHAP. X.
Rapin,
Hist. Eng.
332, 333,
fol. edit.
1732,

The barons felt a greater degree of oppression than the people; which prompted them to take decided measures. In vain will a nobility be expected to succour the people, however oppressed, if there is no infringement made upon their own privileges. Henry was told that they designed to reform the government, and they compelled him to sign an agreement that the articles to be amended should be drawn up by twenty-four barons, of whom he should choose twelve, and decreed death to any who should oppose what they should ordain. These four-and-twenty soon abused their power, in bestowing all the places and offices on their relations and friends, and held several parliaments without the consent of the king, whom they considered as only the shadow of a sovereign. This was to be expected from reformers who were not under the controul of the people.

The king made several attempts to regain his authority; but after the battle of Lewes, in which the king's party was totally defeated, the barons were obliged to call a parliament, and to give it a greater air of authority, they made him sign an order to summon four knights to represent each county, and four for the cities

CHAP. X. of London, York, and Lincoln, being counties within themselves. Chester and Durham had then parliaments of their own, and Monmouth was incorporated with Wales. These representatives were chosen by *universal suffrage* of the *householders*, and although the king regained his authority by the subsequent defeat of the barons, two representatives for each county continued to be elected in a constitutional manner, until the eighth of Henry the Sixth.

This parliament was similar, in every thing but the number, to that summoned and assembled in the fourth year of William the First; the number of representatives in the parliament of that king being *twelve* for each county, in this, only *four*.

Rot. paten.
42. H. 2.

Somner's
Dict. word
Unnan.
Gurdon's
Parl. vol. i.
216.

Henry, in consideration of subsidies granted by his subjects, made frequent concessions to his barons and the people. In the forty-third year of his reign, he sent a charter to each county of England, publishing his resolution to take the advice of his parliament, and in the charter expresses who were to be the representatives. It is written in the mixed dialect of that day, and states, "We make known to you all, that we will and grant that what all our counsellors, or the greater part of them, who have been elected by us and by the people, &c." Those representatives included in the words *elected by us*, were the great barons

who had particular writs of summons directed CHAP. X.
to each, and those meant by *elected by the*
people, were the lesser tenants in capite re-
turned by the sheriffs.

In the parliament held in the forty-ninth of
his reign, and while Henry was in the power
of Simon Montford, Earl of Leicester, he sent
writs to the nobles, and to the sheriffs of the
several counties to return two knights for each
county, two citizens for each city, and two
burgesses for each borough. And in the fifty-
second year of his reign, he confirmed Magna
Charta at Marlborough.

Parl. Sum.
3. Gurdon's
Parl. vol. i.
p. 217.

The parliaments of this kingdom from this
period re-assume their original constitutional
nature, and the *people* begin to enjoy that
liberty which had been wrested from them by
Norman violence. Their ancient imprescrip-
tible rights were never forgotten, and they ever
asserted those rights on every favourable oppor-
tunity.

CHAPTER XI.

State of the Representative System in the Time of Edward the First to that of Edward the Second inclusive.

CHAP. XI. EDWARD the First has been styled by several historians the Justinian of England, as he brought into a higher degree of perfection the statute and common law of the land. The administration of justice between man and man was more methodically arranged; and when laws were proposed to his parliaments for assent and confirmation, he made choice of upright judges to put them into execution. These are incorporated into the body, and have become part of the common law of England.

Hist. Com.
Law, 163.

On his accession to the throne, he issued out writs to two commissioners in every county, to inquire, by twelve legal men, what were the royalties and prerogatives of the crown. He also took care of the rights of his subjects, for these commissioners had orders to inquire of sheriffs, &c. whether they had extorted money from any man by virtue of their office, wronged any man, or received bribes.

Gurd. Parl.
vol. i. 80.

Ibid.

At Easter, in 1276, Edward held a parlia-

ment at Westminster of archbishops, bishops, CHAP. XI.
 abbots, priors, barons, and *commons*, wherein
 were made many excellent laws, called Westminster the First, containing fifty-one chapters.
 The commons were the small tenants *in capite*,
 summoned in general by the sheriffs.

The statute of Westminster the First begins ^{3 Edw. I.}
 with these authoritative words, "The king
 willeth and commandeth, &c.;" and in his
 confirmation of Magna Charta, "Edward, by ^{25 Edw. I.}
 "the grace of, &c., have granted for us and our
 "heirs, that the charter of liberties and the
 "charter of the forest, which were made by the
 "common assent of the realm, in the time of
 "Henry our father, shall be kept in every point
 "without breach, and that all justices, sheriffs,
 "mayors, and other ministers, shall allow the
 "great charters of the common law and of the
 "forest to be pleaded before them." This was
 the lasting confirmation of Magna Charta.

After the eighteenth year of the reign of Ed-
 ward, when knights, citizens, and burgesses,
 were summoned to parliament, the government
 became compounded of three estates: the king
 as sovereign represented monarchy; the lords,
 aristocracy; and the commons, democracy. The
 executive power was solely in the king, from
 whence is derived the two grand maxims of
 the English law, that the king is always a
 minor, and that he can do no wrong,

StateTracts,
 459.
 Gurd. Parl.
 vol. ii. 277.

CHAP. XI.

Selden's
Baronage,
135.

Brady, vol.
ii. 55.

Bracton,
lib. ii. 36.
Daniel, fol.
194.

Parl. Sum.
19.

Daniel, fol.
196.

A parliament was summoned to meet at Salisbury in the twenty-fifth year of this reign, when the king demanded the assistance of his earls, barons, and knights, who held *in capite* twenty pounds a year, either to go in person to Flanders or to contribute to the expedition. Many of the nobility and knights not only refused to go, but would not agree to the contribution unless it was ordained by *common consent of parliament*. The king then raised the tax by his prerogative, but Humphrey de Bohun, earl of Hereford and Essex, constable of England, and Roger Bigod, earl of Suffolk and Norfolk, marshal of the realm, forbade the barons of the exchequer to raise it, as being contrary to law, and it was not levied.

The slender assistance Edward received from his nobility, and the opposition this parliament made to his power, caused the king to look upon Magna Charta as being too great a check on the royal prerogative; but before he returned from his expedition, having weighed the dissension between him and his parliament, and in order to avoid the difficulties his grandfather and father laboured under, he ordered the parliament to meet in London, his son, afterwards Edward the Second, being regent. In the same year, he sent from Flanders a charter under his seal, confirming the great charter, and ordered duplicates to be distributed into each county,

to be read in all cathedral churches twice a year. And he declared the aids and taxes he had raised without consent of parliament should not be made a precedent, and that for the future he would not raise any taxes without the *common consent* of the realm. CHAP. XI.
Walsingh.
Hist. Eng.
p. 73.

Edward the First explained and excellently enforced Magna Charta by the statute “*de tallagio non concedendo*,” and by other statutes brought the statute law into great perfection. A great many of the acts of parliament of Edward the First, though not found in the records, and only preserved in ancient manuscripts and printed books, have all along been accepted as acts of parliament, though the rolls are lost. These acts were drawn up into the form of a law, which being agreed upon and approved by lords and commons, became law as soon as the king gave his consent, which sanction was its final confirmation. Hist. Com.
Law, 10, 15,
19.

In the year 1300, and in the twenty-eighth of his reign, Edward passed those beneficial laws called “*Articuli super Chartas*,” where the great charters are again confirmed, and three knights chosen in every county to hear and determine from day to day, in a summary manner, all complaints against the king’s ministers, as well as all others who offended against the great charters. An institution worthy of a patriot king, who feels himself guardian of the Daniel, fol.
200.

CHAP. XI. liberties of his subjects; and thus constitutes a security for the rights of the people, places a barrier against the incroachments and oppressions of ministers, and points out a mode of preventing such gross peculations as the committee of the house of commons have recently discovered to exist in almost every department of the state.

In the year 1294, Edward had been obliged to exact no less than a sixth part of all the moveables of the laity, and one-half from the clergy, for his expedition into Poictou, and to make head against the Welch. War breaking out in France, and his intention to invade Scotland, made him have recourse to the new project of summoning the representatives of all the boroughs to parliament, as was the custom in Saxon times, as most likely to drain money from the traders and lower ranks of people, whom he dared not to venture to tax without their consent through their representatives. Writs for this purpose were addressed to the sheriffs, and they were directed to send representatives for *every city and borough in their bailiwicks*. But the sending representatives was attended with trouble and expense, as the boroughs paid their representatives; and the people perceiving that no good was intended, many declined returning any; however, the king very readily excused these, where he could not command one of his

own creatures to be chosen ; but he took care CHAP. XI.
that the royal and other boroughs, where his
influence extended, should send representatives
of his own nomination.

Hence, as Mr. Wilkes once observed in the house of commons, in Cornwall, and the other counties on the same coast, almost every village sends representatives, because in these counties the king's power and property chiefly lay, on account of the mines and tallages. In this manner Edward succeeded in procuring a parliament composed of his own creatures, whose first and only business was to lay heavy taxes on wool and leather. These representatives were generally tradesmen, no landed qualification being required ; they did not interfere with legislation, their sole duty was to grant money.

The number of cities and boroughs to which writs were issued was about one hundred and seventy ; but many of these, on account of their poverty, did not send representatives. There were many of superior opulence, to which writs ought to have been issued, but they were intentionally omitted by the sheriffs, who were appointed by the king, because they were too independent. It was not until the reign of Richard the Second, that the sheriffs were deprived of omitting boroughs at their pleasure ; and so miserably dependent were those boroughs that did send representatives, that there is on

CHAP. XI. record an instance of the king having named all the deputies. Although so few of the boroughs were represented, the court levied in *all* the boroughs the tax imposed by the majority of deputies.

In the Saxon times each borough sent but one deputy ; yet the number of deputies was considerable, for every town or village that chose to send a deputy did so. But it served the king's purpose better to have two deputies only from places under his influence. This corrupt influence of the crown at length gave umbrage to the great barons, who took care that the boroughs dependent on them should send deputies, while the independent boroughs, not perceiving the importance of representation, sent none whatever, although their right was not then disputed. The deputies introduced by the barons were, notwithstanding the farce of choosing them in the boroughs, always named by the lord. These commons did not assume the name of representatives ; in ancient writs they are named *deputies*. Hume tells us, “ he “ (Edward the First) issued writs to the sheriffs “ to send to parliament two *deputies* from *each* “ borough within their county, provided with sufficient powers to consent in their name to what “ he and his council should require of them. As “ WHAT CONCERNS ALL, SHOULD BE APPROVED OF BY ALL.” A noble principle ! which

Hume.

may seem to indicate a liberal mind, if it had been honestly adhered to. CHAP. XI.

There are instances recorded, that when new matter was proposed by the king, the deputies replied, they could not consider the subject without returning to the country to receive fresh instructions. It was not until much later times, and when they had manifested themselves worthy of no trust whatever, that they assumed the name, and arrogated the powers, of representatives. Although the constituents were far less enlightened than they are at this time, no evil was ever found to arise from attending to their instructions.

Such was the origin of that partiality in the representation, of which the people of England so justly complain. The assertion, therefore, is absurd, that because many considerable boroughs did not perceive the consequence of neglecting to send deputies to the house of commons, or did not choose to be at the expense of paying their representatives, that the privilege of sending them afterwards was irrevocably lost, without a grant anew from the king or parliament. If they had no right to refuse it *then*, they have certainly less right to refuse it *now*, when traders have become much more enlightened, and of so much consequence to the state. If the inhabitants of the ancient boroughs were so indifferent about electing deputies, because they perceived

CHAP. XI.  no immediate advantage arising from it, is it likely that the people of the present day would be tumultuous in choosing representatives, or too forward in instructing them, if universal suffrage was restored? Finding no immediate profit, they would return to their former state of indifference, and lose, by the neglect of those important duties, all the advantages they might derive from the possession of those privileges so anxiously wished for.

It has been mentioned, that Henry the Third directed four knights should be sent from each county to represent the landholders, which has been considered by many as the foundation of a house of commons. This idea is erroneous; for the county representatives sat with the lords many years after the boroughs were represented, and they have always remained a part of the upper house, whatever local separation may have taken place. They are bound to them by the strongest of all ties, that of a common interest, being generally great landholders. And it was not till the sixteenth of Edward the Third that they appear to have united, and even then not finally, until the commons had assumed a tone of power which alarmed the landholders for their exclusive privileges.

It is immaterial how the different orders of parliament are distinguished. There is one great and eternal distinction arising from the

nature of things, which no wisdom can anni-
hilate, and no artifice can disguise ; and that is, CHAP. XI,
the distinction between the landed and mercan-
tile interests. It manifested itself in Greece and
Rome, and was the origin of dissensions, which
frequently brought these states to the verge of
destruction. It has produced violent disorders
wherever there was any claim to liberty.—
Where the people have little trade, and no pre-
tensions to freedom, the great landholders affect
the pomp of princes ; and, to support their ar-
rogance, reduce the peasantry to the most abject
state under which human nature can groan.
And though wisdom has not yet found the
means of annihilating, nor artifice of disguising
these clashing interests, justice, generosity, and
sound policy, may so far conciliate such social
jars, that no commotion may disturb individual
and general happiness.

This great desideratum cannot be effected but
by a fair and equal representation, aided by the
exertions of the most intelligent part of the
people, in giving it the most particular instruc-
tions relative to their rights and interests, and
displacing such as have been deficient in the
constitutional part of their duty. For, however
careful the people may be in the selection of
their representatives, few will be found suffi-
ciently chary of their interests, and faithful to
the trust reposed in them by their constituents.

CHAP. XI. At this period parliament obtained its establishment, though their constituent parts underwent the most material and humiliating alterations in this, as well as in every succeeding reign until the Revolution. Edward the First summoned only *two* members for each county, instead of four: the city of London was alone permitted to retain that privilege. In the twenty-third year of his reign he pretended to restore the Saxon constitution; but instead of summoning the hundreds and tithings in full county court to elect a representative, as had formerly been the custom, such partiality was manifested by the sheriffs, that only such boroughs as shall be hereafter mentioned appear to have received precepts.

It is impossible at this distance of time to ascertain whether all the boroughs in England were summoned to this parliament, as in the time of the Saxons, or whether the summonses were only directed to such boroughs as were entirely in the king's interest. We find in "Prynne's Parliamentaria rediviva," that great partiality was exercised by the sheriffs in issuing precepts to several boroughs within their jurisdictions, particularly that Glastonbury in Somersetshire, Christchurch and Overton in Hampshire, St. Edmund's Bury in Suffolk, Haydon and Richmond in Yorkshire, had only one precept issued to them; Odiham,

in Hampshire, two precepts ; and Alton and Basingstoke, in the same county, had four. Christchurch was again summoned in the thirteenth of Elizabeth. The whole number of counties, cities, and boroughs, summoned to this parliament was one hundred and forty-nine, the return to which was found by Mr. Prynne in Cæsar's Chapel, in the White Tower of London, in the reign of Charles the Second. Many other summonses might have been sent, but as no returns were made thereon, we cannot find that the parliament of that reign consisted of more representatives than for the following counties :

| | |
|------------------|------------------|
| Bedfordshire, | Lancashire, |
| Berkshire, | Leicestershire, |
| Buckinghamshire, | Lincolnshire, |
| Cambridgeshire, | Middlesex, |
| Cornwall, | Norfolk, |
| Cumberland, | Northampton, |
| Derbyshire, | Northumberland, |
| Devonshire, | Nottinghamshire, |
| Dorsetshire, | Oxfordshire, |
| Essex, | Rutlandshire, |
| Glostershire, | Shropshire, |
| Hampshire, | Somersetshire, |
| Herefordshire, | Staffordshire, |
| Hertfordshire, | Suffolk, |
| Huntingdonshire, | Surrey, |
| Kent, | Sussex, |



Warwickshire, Worcestershire, and
Westmoreland, Yorkshire.

Chester and Durham had, at this period, palatinate parliaments of their own, and Monmouth was part of Wales.

The following are the cities and boroughs which also returned members in this reign :

| <i>Cities and Boroughs.</i> | <i>Counties.</i> |
|--|------------------|
| Bedford | Bedford. |
| Newberry, Reading, Wallingford, and Windsor | Berks. |
| Agmondesham, Wendover, Wycombe | Bucks. |
| Cambridge, Ely city | Cambridge. |
| Bodmyn, Helston, Launceston, Lydeford, Truro | Cornwall. |
| Carlisle, Egremont | Cumberland. |
| Derby | Derby. |
| Ashburton, Barnstaple, Crediton, Exeter, Honiton, Oakhampton, Plymouth, Plympton, South-Moulton, Teignmouth, Torrington, Totness | Devon. |
| Blandford, Bridport, Dorchester, Lyme-Regis, Shaftesbury, Wareham | Dorset. |
| Colchester | Essex. |
| Bristol, Gloster | Gloster. |
| Bromyard, Hereford, Ledbury, Leominster, Ross, Weobley | Hereford. |
| Hertford, St. Albans | Hertford. |
| Huntingdon | Huntingdon. |

| <i>Cities and Boroughs.</i> | <i>Counties.</i> |
|---|------------------|
| Canterbury, Rochester, Tunbridge | Kent. |
| Lancaster, Liverpool, Preston, Wigan | Lancaster. |
| Leicester | Leicester. |
| Grimsby, Lincoln, Stamford .. | Lincoln. |
| London | Middlesex. |
| Lynn, Norwich, Yarmouth .. | Norfolk. |
| Northampton | Northampton. |
| Bambury, Corbrigg, Newcastle | Northumberl. |
| Nottingham | Nottingham. |
| Burford, Chipping - Norton, Doddington, Oxford, Witney, Woodstock | Oxford. |
| Bridgenorth, Shrewsbury | Salop. |
| Axbridge, Bath, Bridgewater, Chard, Ilchester, Langport, Mantacute, Milbourne-Port, Taunton, Ware, Watchet, Wells | Somerset. |
| Alresford, Alton, Andover, Basingstoke, Fareham, Newport, Odiham, Overton, Petersfield, Portsmouth, Southampton, Winchester, Yarmouth | Southampton. |
| Litchfield city, Stafford | Stafford. |
| Dunwich, Ipswich, Orford, St. Edmund's-Bury | Suffolk. |
| Bletchingley, Guilford, Rye-gate, Southwark | Surrey. |
| Arundel, Bramber with Steyning, Chichester, Horsham, Lewes, Seaford, Shoreham, | |

CHAP. XI.

*Cities and Boroughs.**Counties.*

| | |
|--------------------------------|---------------|
| Stayning coupled with Bram- | |
| ber as one borough..... | Sussex. |
| Coventry, Warwick | Warwick. |
| Appleby | Westmoreland. |
| Bedwin, Bradford, Calne, Chip- | |
| penham, Devizes, Downton, | |
| Highworth, Ludgershall, | |
| Marlborough, Malmesbury, | |
| Mere, New Sarum, Old Sa- | |
| rum, Wilton | Wilts. |
| Broomsgrove, Dudley, Droit- | |
| wich, Evesham, Kiddermin- | |
| ster, Pershore, Worcester.. | Worcester. |
| Allerton, Beverly, Haydon, | |
| Jervall, Malton, Pickering, | |
| Pontefract, Ravenser, Rip- | |
| pon, Scarborough, Thirske, | |
| Tyckill, York..... | York. |

These were all the returns found by Mr. Prynne in Cæsar's Chapel in the White Tower; but Dr. Browne Willis afterwards discovered the returns of the eighteenth and twenty-third of this reign.

This representative parliament of the eighteenth of the reign of Edward the First having been denied by Dr. Brady to have existed, he positively asserts, in his Treatise on Boroughs, that it was composed only of the barons and tenants *in capite*, and the parliament of the twenty-third of this reign has been taken by subsequent writers to have been the first in which the people were represented.

Doctor Browne Willis found above fourteen hundred returns that Mr. Prynne had omitted ; and in many boroughs which did not intermit sending, he discovered fifteen parliamentary returns in each. In the returns for the city of Bath, which Mr. Prynne had collected with more than ordinary care, as being representative for that city, he discovered no less than eighteen additional ones, also forty boroughs, which he had either overlooked, or had not the sight of; and rectified some great mistakes of Dr. Brady, as his putting the twenty-third of Edward the Third, for the twenty-third of Edward the First, there being no parliament of Edward the Third in that year; which Dr. Browne Willis, with great modesty, says he did not mention to derogate from the ability or industry of that gentleman, but to render indisputable a fact of such importance.

CHAP. XI.
Browne
Willis,
Pref., p. 3.

In addition to those places sending members which we have already mentioned, from the authority of the returns discovered by Mr. Prynne, we shall now give those discovered by Dr. Browne Willis, which also sent representatives in the time of Edward the First.—

| <i>Towns.</i> | <i>Counties.</i> |
|--------------------------------|------------------|
| Great Marlow | Bucks. |
| Leskard, Lestwithiel, Tregoney | Cornwall. |
| Cockermouth | Cumberland. |
| Dartmouth, Tavistock, Honiton | Devon. |
| Liverpool, Wigan | Lancaster. |

CHAP. XI.

Towns.

Counties.

| | |
|-----------------------------------|--------------|
| ~~~~~ Petersfield, Yarmouth, New- | |
| port | Southampton. |
| Litchfield | Stafford. |
| Chichester | Sussex. |
| Cricklade, Old Sarum | Wilts. |
| Evesham | Worcester. |
| Thirske, Haydon, Rippon ... | York. |

The representatives of the beforementioned towns constituted the parliament of the *twenty-third* of Edward the First, and was the first *partial representation of the people*; as a proof of which we find the town of St. Alban's, in the subsequent reign, petitioning to send representatives as they had done in the time of Edward the Confessor, and his progenitors.

The right of electing members was in every householder in each district. The distinction of freeholders, and their exclusive right of voting, was enacted by statute of the eighth of Henry the Sixth; the claim of corporation to exclusive rights, or any right whatever, in cities and boroughs, was totally unknown. The first parliamentary charter granted to a borough was that of Wenlock, in the reign of Edward the Fourth.

It cannot escape observation, that many of the boroughs which returned members to this parliament, do not retain that right; and that the cities of Ely, Westminster, and Chichester, are

not named in the returns: Ely was not summoned until the twenty-seventh of Edward the Third, and Westminster the first of Edward the Sixth: the returns for Chichester and Litchfield were afterwards discovered by Dr. Browne Willis.

The writs found by Mr. Prynne are none of them antecedent to the twenty-sixth of this reign; but we find in Gurdon that writs of summons to the parliament of the eighteenth of the same reign were directed to the sheriffs, commanding them “to cause two or three of the discreetest and ablest knights to be chosen for each county, to have full power for themselves, and the *whole community of the commons of the county*, to consult and consent for themselves and that community, to such things as the earls, barons, and great men, shall think fit to agree upon.”

We have been thus particular in describing every place that sent representatives in this reign, as the returns from the eighteenth to the twenty-sixth of Edward the First are lost; but those of the subsequent years assign the causes why particular places were omitted, or neglected to return members. But notwithstanding the care the king might take that all boroughs should be summoned, the sheriffs seldom made returns for all those within their bailiwicks. The writs did not particularly name the

CHAP. XI.

Gurdon,
Parl. vol. i.
p. 219.Brady's
Burg. 52.

CHAP. XI. boroughs that were to send burgesses, but were
 ~~~~~ general: “*De quolibet civitate duos cives, et de*  
 “*quolibet burgo duos burgenses, &c. eligi fa-*  
 “*cias;*” “*you shall cause to be elected two*  
 “*citizens for EACH CITY and two burgesses for*  
 “*EACH BOROUGH, &c.;*” evidently meaning  
 every city and borough within the county, as  
 was the established custom among the Saxons.

The form of the returns annexed to the ancient writs, indicates something of a discretionary power in the sheriff, who after the insertion of the names of the knights, citizens, and burgesses, concludes thus, “*non sunt*  
 “*plures civitates vel burgi in balliva mea;*”  
 “there are no more cities or boroughs in my  
 “bailiwick;” though there were more boroughs.  
 Sometimes the returns concluded in these  
 words:—“*Et non sunt aliæ civitates seu burgi*  
 “*infra comitatum, de quibus aliqui cives seu*  
 “*burgenses, ad dictum parliamentum venire*  
 “*debent seu solent, propter eorum debilitatem*  
 “*seu paupertatem.*”—“And there are not any  
 “other cities or boroughs within the county,  
 “from which any citizens or burgesses can, or  
 “are accustomed to be sent to the said parlia-  
 “ment, on account of their decay or poverty.”

Anciently burgesses were chosen out of the *residents* in the borough, and not ministers of state, and men not possessing local qualifications, as is the case in these corrupt times. It



was enacted by the first of Henry the Fifth, at CHAP. XI.  
 the petition of the commons, that all burgesses <sup>1 H. 5. i.</sup>  
 returned to parliament should be actually resi-  
 dent in, and free men of, the boroughs they  
 represented.

The sheriffs frequently omitted in their re- Brady's  
Burg. 54,  
59.  
 turns small inconsiderable boroughs that were  
 poor, and not in a condition to pay the burgesses  
 the usual and necessary expenses attendant on  
 their parliamentary duties, or such as had not  
 residents qualified for service in parliament;  
 such omission was according to the favour bo-  
 roughs could obtain from the sheriffs. Several Willis,  
vol. ii. 243.  
 boroughs in Cornwall and in the adjacent  
 western counties being poor, procured, by the  
 interest their lords had with the sheriffs, to be  
 excused from sending representatives, so that  
 many of them were entirely dropped, until they  
 were restored by Edward the Sixth and Queen  
 Elizabeth as ancient boroughs which had been  
 neglected and overlooked. Some boroughs  
 claimed exemption by royal charter, from ser-  
 vice in parliament; as Torrington, in Devon-  
 shire, did, from the forty-second of Edward the  
 Third; though that borough had made about  
 thirty returns of burgesses to parliament in his  
 and the two preceding reigns of the Edwards.  
 Of the great number of ancient free boroughs in  
 Cornwall, only Launceston, Liskeard, Lestwi- Willis,  
Pref. 9.  
 thiel, Truro, Bodmin, Helston, and Tregony,



CHAP. XI. sent burgesses to parliament until the time of Edward the Sixth: the remainder of the Cornish boroughs being privileged by charters, since the last year of Henry the Eighth; and most of them, in their charters of incorporation, are stiled ancient boroughs.

The sheriffs who neglected returning representatives for poor boroughs, or such as had no residents qualified for service in parliament, were not, therefore, blamed by the king, lords or commons; but when the favour was by the influence of any powerful lord, to serve some private end, they were accused in parliament, or petitions presented to the king to institute an inquiry into their conduct.

The parliament of the twenty-third of this reign was the first which assembled in two houses; the knights of the respective shires, in the preceding reign of Henry the Third, sat in the same house with the barons; and continued so to do till they found the growing power of the representatives for cities and boroughs, and the exclusive right they maintained of granting money, establish a consequence of much higher importance than what was possessed by the barons. The number of county members antecedent to this year was four for each county, but from this period we find some variation; at one time, three were elected for certain counties, and only two for each of the others. In the



twenty-sixth of Edward the Third, we find only CHAP. XI.  
one knight returned for each county. ~~~~~

In the writs of this year the sheriffs are not commanded to return any citizens or burgesses whatever, as in other writs is usual; but the king directed particular writs to the mayors and bailiffs of cities and boroughs, to return one citizen for every city, and one burgess for every borough, except London, which, by the writ then issued to the sheriffs, were commanded to elect two citizens, as their representative members. In the twenty-seventh of this reign similar writs were issued; but in the twenty-eighth year two knights, citizens, and burgesses, were again summoned for each place, and four for London.

Although the returns for the several counties, cities, and boroughs, antecedent to the twenty-sixth of Edward the First, were supposed to have been lost or destroyed, until they were discovered by Dr. Browne Willis, yet the writs of summons to the parliaments preceding that year are in existence, and bear ample testimony that there was a representative parliament in the eighteenth of the same reign; the subsequent discovery of the returns, with the names of the members, was easily decyphered by Dr. Browne Willis, and which Dr. Brady states to have been illegible.

Prynne's  
Parl. redi-  
viva, p. 149.

Brady's  
Boroughs,  
p. 56.



CHAP. XI. In the bundle of the writs of the eighteenth of this reign directed to the sheriffs of the several counties, two or three knights were directed to be chosen for each county; and, accordingly, Norfolk, Suffolk, Cumberland, Cambridge, and Huntingdonshires returned, each of them, three knights, with the manucaptors for their appearance, while the others returned but two each.

The writs for summoning citizens and burgesses as well as knights for the respective counties in the twenty-third year of Edward the First, direct that they shall have power to act *separately* from the knights of the shires, and do what by common councils should be ordained; “Et dicti cives et burgenses plenam et sufficientem potestatem pro se, et communitate civitatum, et burgorum. *Divisim* ab ipsis (*i. e.* militibus) tunc ibidem habeant, ad faciendum tunc quod de communi concilio ordinabitur in præmissis;” “and accordingly the earls, barons, and knights, who then sat, treated and consulted together about granting taxes, gave an eleventh part of their moveable goods; and the good men of his demesne cities and burghs, granted a seventh part:” and it became afterwards an established rule, for the citizens and burgesses to give a third part more of their personal estates than the earls, barons, and knights did grant.

Brady's Boroughs, p. 56.



The writs for the election of knights, citizens, and burgesses to the parliament of the twenty-third of this king were as follow : CHAP. XI.

“ The king to the sheriff of Northampton-  
“ shire greeting. Because we desire to have a  
“ conference and treaty with the earls, barons,  
“ and other great men of our kingdom, to pro-  
“ vide remedies against the dangers the same  
“ kingdom is in at this time, therefore we have  
“ commanded them, that they be with us at  
“ Westminster on the next Sunday after the  
“ feast of St. Martin, in winter next coming, to  
“ treat, ordain, and do, so as those dangers may  
“ be prevented. We command and firmly en-  
“ join thee, that without delay thou dost cause  
“ to be chosen, and to come to us at the time  
“ and place aforesaid, two knights of the coun-  
“ ties aforesaid; and of every city, two citizens;  
“ and of every burgh, two burgesses, of the  
“ most discreet and fit for business : so as the  
“ said knights may have sufficient power for  
“ themselves and the community of the county  
“ aforesaid ; and the said citizens and burgesses  
“ may have the same power, *separately* for them-  
“ selves and the *community* of cities and burghs,  
“ then to *do* in the premises what *shall be or-*  
“ *dained* by the common council. So that for  
“ defect of such power the business aforesaid  
“ may not remain undone ; and have there the  
“ names of the knights, citizens, and burgesses,



CHAP. XI. “and this writ. Witness the king at Canterbury, the third of October.”

Petit's Parl.  
p. 35.

No returns being found prior to the twenty-sixth of this reign was no argument against the former existence of representative parliaments, as we have just given the writs of summons for the eighteenth and twenty-third of the same king, and in a parliament of the thirty-seventh of Henry the Third. The dreadful sentence or curse published in the great hall of Westminster against the infringers of Magna Charta was publicly protested against by the king, his nobles, and the *community of the people*, “Rex, magnates, et *communitas* populi,” being “contra consuetudines regni antiquas et usitatas—contrary to the ancient and established customs of the kingdom;” and in testimony of this, the king, as well as the earls of Norfolk, Hereford, Essex, and Warwick, and Peter de Saubadia, at the instance and request “*aliorum magnatum et populi* præsentium scripta sigilla sua apposuerunt—of other nobles and people present, have to the said writing placed their seals.”

The parliament of the forty-ninth of Henry the Third is allowed by all writers to have been a representative parliament, composed of barons, and four representatives for each county; and the cinque ports, for which no returns were found in the White Tower till the forty-second year of Edward the Third, claim to



have sent members as early as the eleventh of Henry the Third, although they were not restored to that privilege until the period above-mentioned. The parliament of the fourth of William the First has been already proved to have consisted of twelve representatives for each county.

CHAP. XI.

De Greve,  
c. 35.

It has been also demonstrated that the commons of England, as we now style them, gave their suffrage and vote in the enacting and making of all statutes and laws in the time of the progenitors of Henry the Third, for Bracton, a learned judge, who flourished in the reign of that king, thus concludes his argument relative to the expression “progenitors.”—“Cum  
“legis vigorem habeat quicquid de consilio et de  
“consensu magnatum, et reipublicæ communi  
“sponsione autoritate regis sive principis præ-  
“cedentis justè fuerit definitum et approba-  
“tum.” Whatsoever, by the advice and consent of the nobles and the common agreement of the people, required the vigor of law, it was lawfully declared and approved on the authority of the preceding king or prince.

Brac. lib. i.  
c. 1.

And so just and excellent was the balance of the constitution of our legal government, in preventing any order or rank of the subject to impose upon, or bind the rest, without their common consent, and in preserving an universal liberty and property to every degree of indi-

Petit's Parl.  
44.



CHAP. XI. *viduals.* The county palatine of Chester, *ab antiquo*, was not subject to laws to which they did not consent; for, as well before as after the Conquest, they had their commune concilium, or court of parliament, by authority of which the barones, milites et quamplures alii barones liberi homines et omnes alii fideles, or as the petition to Henry the Sixth says, the abbots, priors, clergy, barons, knights, esquires, and commonalty, did, with the consent of the earl, make or admit laws within the same, as should be deemed expedient for the weal of the inheritors and inheritance of the said county, and no inheritors or possessors within the said county were chargeable or liable, or were bounden, charged or hurt of their bodies, liberties, franchises, lands, goods, or possessions, unless the said county (or parliament) had agreed to it. Neither this county nor Durham were ever subjugated to have their estates given away at the will and pleasure of the earl and bishop, under any notion of being their representatives in the *commune concilium regni*, or in being dependent tenants, that their consents were included in the assent of their lords, and if the *commune concilium cestrense*, or parliament, was deduced from records, it would be of greater importance to shew us, as in a mirror, the government of England in ancient days, than what has been published by any author. The answer to this petition made by

Rot. 44  
H. 3. m. 1.  
dorso.  
Rot. Pat.  
3 Ed. 1. m.  
6.



all the *judges* of the land, *his council in parliament*, cannot be supposed to be grounded upon a usage of fifty-nine years from the forty-ninth of Henry the Third, until then, as if the tenants *in capite*, by *right of representation*, made the parliament, as some pretend, but that it was a declaration of the ancient custom and right of the nation. It was not in the power of all the tenants *in capite* of England, or the greatest part, who were the petitioners, though with the king's consent, to bind and oblige others, or to make or alter a law *without the assent of the community of the kingdom*, who had a *consulting and a decisive vote*, an act of authority and jurisdiction, as well in assenting to spiritual as temporal laws; and this appears from their declaration to Edward the Third in parliament, "that no statute or ordinance be made or granted according to the petition of the clergy, if it be not by the *assent of your commons*, nor that your said commons be not obliged by any constitutions which they may make for their advantage, *without the assent of your said commons*; for they will not be compelled by any of your statutes or ordinances made *without their assent.*"

That this was the ancient *law and right* of the kingdom appears by the answer of Edward the First, in the twenty-second year of his reign, to the whole clergy of England, who had given

Henry de Knighton  
de Event.  
Angliæ, lib.  
iii. p. 2502.  
A.D. 1294,  
20 Ed. 1.



CHAP. XI. the king the half of all their temporal and spiritual possessions. Complaining that the immunities of the church had been hurt and violated, they asked of the king, amongst other things, "that the statute of mortmain, which had been enacted to the prejudice of the holy mother church, should be rescinded." To this it was answered, "that the statute in question had been declared and ordained by the advice of the nobles, magnatum," and without their advice it could not be repealed.

Coke,  
2 Inst. fol.  
75.  
Rot. claus.  
Ed. I. m. 5.  
dorso.  
Rot. pat.  
10 Ed. 1.  
m. 13.

A more certain authority, however, informs us, that the statute was made "*per commune concilium regni*," or parliament, and that the commons were unquestionably an essential part, and joined in making the statute.

To place this universal right beyond doubt, the following writ of summons from King Edward the First to the archbishop of Canterbury, to cause to be elected one representative for each chapter, and two for each diocese, to the parliament of the twenty-third of his reign, shews, that laws to bind all were to be assented to by all; the clergy at that time forming a distinct part of the house of commons, not having been permitted to vote with the laity until a later period.

"The king to the venerable father in Christ,  
"R. by the same grace, archbishop of Canterbury, &c. greeting. As the most just law



“ established by princes doth appoint, *that* CHAP. XI.  
“ *which concerns all should be approved by*  
“ *all*; so it evidently shews “ *that dangers*  
“ *common to all should be obviated by re-*  
“ *medies provided by all.* We understand suf-  
“ ficiently, and as we believe it is now divulged  
“ through the whole world, how the king of  
“ France fraudulently surprised Gascony, and  
“ yet detains it from us. But now, not content  
“ with that, he hath provided a great navy  
“ and army, with which he hath invaded our  
“ kingdom and the inhabitants thereof, and in-  
“ tends to destroy the English nation and lan-  
“ guage, if his power was answerable to his  
“ detestable purpose (which God avert). Be-  
“ cause, therefore, foreseen attempts do less  
“ hurt us, and not only you chiefly, but the  
“ rest of the inhabitants of the kingdom are also  
“ concerned in this matter, we command, firmly  
“ enjoining you in the faith and love by which  
“ you are bound to us, that on the Sunday next  
“ after the feast of St. Martin next coming, you  
“ be at Westminster, and that you warn the  
“ prior and chapter of your church, the arch-  
“ deacon, and whole clergy of your diocese,  
“ and cause the prior and archdeacon, in their  
“ own persons, and the chapter by one,  
“ and the clergy by two fit \* procurators, or  
“ proxies, having sufficient power from the said

\* These are now called clerks of the convocation.



CHAP. XI. “chapter and clergy to be present with you,  
“then and there to treat, ordain, and appoint  
“with us, and the rest of the prelates, great  
“men, and other inhabitants of this kingdom,  
“how to prevent these dangers, and designed  
“mischiefs. Witness the king at Wengeham,  
“the 30th of September.”

This parliament of the twenty-third of Edward the First was, therefore, never even pretended to be a creation of a new right, but a partial restoration of that which had pre-existed. The acknowledgment, in the writs, of the old constitutional maxim, “that laws to bind all must be assented to by all,” is an unquestionable proof of this fact, and the right of the whole body of the people to elect and be represented is ascertained in these writs, the most ancient now upon record. The sheriffs are commanded to summon the “*whole community*” of each county to elect knights, also “*all the cities and boroughs*” in their bailiwicks to choose citizens and burgesses for the parliament to be assembled, &c.; and this right of voting and electing we shall hereafter shew was exercised by the “*whole community*,” that is, by all the householders in the respective counties, until the eighth year of Henry the Sixth; and in all the cities and boroughs, until such rights were limited by charters, or by resolutions of committees of privileges in the house of commons, and that



the summoning particular cities and boroughs CHAP. XI.  
to send representatives to parliament in one  
reign, and omitting them in another, was the  
consequence of local inability to pay their mem-  
bers in some instances, and of arbitrary prefer-  
ence in others, and were so many innovations  
upon the ancient constitution of parliament,  
which have at last reduced the representation  
of the people to the shadow of its former great-  
ness.



## CHAPTER XII.

*State of the Representative System from the Reign of Edward the Second to that of Richard the Second.*

CHAP.  
XII.

Chron.  
de Lan.

THE first parliament of Edward the Second was held at Northampton, in 1307, of which no records are left on the rolls, when the clergy gave a fifteenth, and the laity, together with the citizens and burgesses, a twentieth part of all their moveables.

Rot. Clau.  
2 Ed. 2.  
m. 4. in  
Sedula  
eod. Rot.

It appears from the rolls of this year, that there were several parliaments or great councils: particularly that held at Westminster in the beginning of Lent, which was adjourned till after Easter, when the king confirmed the great charter, and that of the forest, in consideration of which the lords and commons granted the twenty-fifth penny of all their personal estates.

The Scots having been successful in their inroads, more particularly after the battle of Bannockburn, the parliament, in the year 1315, consisting of the great men and commonalty of the kingdom, granted to the king out of every town, except cities and boroughs, and the demesne lands of the crown, one foot soldier at the charge of the towns, and to defray their



expenses for sixty days after they came to the rendezvous. The king promising to give his letters to the great men and commonalty and to their heirs, that this grant should be no precedent, or drawn into example for the future.

CHAP.  
XII.

In the fifteenth of his reign the parliament was held at York, and on the twenty-seventh of November following, he directed writs to the prelates and clergy of both provinces to meet in two convocations at Lincoln and York, in order to treat of a competent aid to be given him for his expedition against the Scotch. He gives in those writs a recital of what the prelates, earls, barons, noblemen, and commons, had done at York, that they had granted him a tenth of the goods of the community or body of the people, and a sixth of those of the citizens and burgesses. The Latin original is thus expressed, "Prelati, comites, barones, et procures, "nec non communitates dicti regni apud Eborum ad tractandum superdictis negotiis et aliis nos et statum regni tangentibus nuper convocati et *decimam* de bonis de communitate ejusdem regni et *sextam* de civitatibus, burgis, et antiquis dominicis nostris, nobis liberaliter concesserunt et gratanter." From whence may be observed, that the citizens, burgesses, and tenants, in ancient demesnes are here mentioned as distinct from the great body of the people; although they have always con-

Rot. Claus.  
15 Ed. 2.  
m. 20.  
dorso.

Rot. Claus.  
16 Ed. 2.  
m. 20.  
dorso.



CHAP.  
XII.

stituted a component part of the commons or commonalty.

Edward the Second yielded too much to the insidious doctrines of his favorites. Hugh de Burgh, created earl of Kent by Henry the Third, advising him to cancel Magna Charta, was degraded by the peers in parliament. The Spencers severely felt the indignation of the barons for giving the same pernicious advice to Edward. The barons declaring they would no longer trust to the vain promises and reiterated delays of the king, rose in arms for the preservation of their liberties, and demanded an immediate confirmation of the charter of liberties, which otherwise they would procure by force. The misconduct of the king roused the whole nation to a sense of what they owed to themselves, and exerting that privilege which belonged to the sovereignty of the people, the parliament of Westminster, in 1326, assumed their constitutional right, exhibited articles against the monarch declaratory of his incapacity as a ruler, by unanimous consent proceeded to depose him, and to elect his son in his stead.

The counties sent members to parliament in this reign the same as in the preceding; the following cities and boroughs were summoned by Edward the Second :



*Bedford County.*

Bedford,  
Dunstable.

*Berks County.*

Reading,  
Wallingford,  
Windsor.

*Bucks County.*

Agmondesham,  
Marlow,  
Wendover,  
Wycombe.

*Cambridge County.*

Cambridge.

*Cornwall County.*

Bodmin,  
Launceston,  
Helston,  
Liskeard,  
Lestwithiel,  
Truro.

*Cumberland County.*

Carlisle.

*Derby County.*

Derby.

*Devon County.*

Barnstaple,  
Bradneysham, or  
Bradninch,

Exeter,

Honiton,

Oakhampton,

Plympton,

Plymouth,

Torrington,

Totness.

*Dorset County.*

Bridport,

Dorchester,

Lyme Regis,

Melcombe,

Shaftesbury,

Wareham,

Weymouth.

*Essex County.*

Colchester.

*Gloster County.*

Bristol,

Gloster.

*Hereford County.*

Hereford,

Leominster.



|                        |                                                                    |                                                                                                             |
|------------------------|--------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| CHAP.<br>XII.<br>~~~~~ | <i>Hertford County.</i><br>Hertford,<br>St. Albans,<br>Storteford. | <i>Nottingham County.</i><br>Nottingham,<br>Retford.                                                        |
|                        | <i>Huntingdon County.</i><br>Huntingdon.                           | <i>Northampton County.</i><br>Northampton.                                                                  |
|                        | <i>Kent County.</i><br>Canterbury,<br>Rochester.                   | <i>Northumberland County.</i><br>Newcastle.                                                                 |
|                        | <i>Lancaster County.</i><br>Lancaster,<br>Preston.                 | <i>Oxford County.</i><br>Oxford,<br>Witney.                                                                 |
|                        | <i>Leicester County.</i><br>Leicester.                             | <i>Rutland County.</i><br><i>Salop County.</i><br>Bridgenorth,<br>Shrewsbury.                               |
|                        | <i>Lincoln County.</i><br>Grimsby,<br>Lincoln,<br>Stamford.        | <i>Somerset County.</i><br>Axbridge,<br>Bath,<br>Bridgewater,<br>Chard,<br>Ilchester,<br>Taunton,<br>Wells. |
|                        | <i>Middlesex County.</i><br>London.                                |                                                                                                             |
|                        | <i>Norfolk County.</i><br>Yarmouth,<br>Lynn,<br>Norwich.           | <i>Southampton County.</i><br>Alton,                                                                        |



|               |                 |
|---------------|-----------------|
| Andover,      | Chichester,     |
| Basingstoke,  | East Grinstead, |
| Christchurch, | Horsham,        |
| Odiham,       | Lewes,          |
| Portsmouth,   | Midhurst,       |
| Southampton,  | Seaford,        |
| Winchester.   | Shoreham.       |

*Stafford County.*      *Warwick County.*

|             |           |
|-------------|-----------|
| Litchfield, | Coventry, |
| Stafford.   | Warwick.  |

*Suffolk County.*      *Westmoreland County.*

|          |          |
|----------|----------|
| Dunwich, | Appleby. |
| Ipswich. |          |

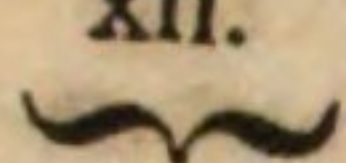
*Surrey County.*      *Wilts County.*

|              |
|--------------|
| Bedwyn,      |
| Calne,       |
| Chippenham,  |
| Cricklade,   |
| Devizes,     |
| Downton,     |
| Ludgershall, |
| Malmesbury,  |
| Mere,        |
| Marlborough, |
| New Sarum,   |
| Old Sarum,   |
| Wilton.      |

*Sussex County.*

|                    |
|--------------------|
| Arundel,           |
| Bramber with Stey- |
| ning,              |



CHAP. *Worcester County.*  
XII.

Droitwich,

Worcester.

*York County.*

Beverley,

Hull,

Ravenser,

Rippon,

Scarborough,

York.

Edward the Second being by the sentence of the lords and commons in parliament, and also by his own solemn resignation formally deposed, his son Edward the Third at the age of fourteen was, by the estates of the kingdom, *elected* and declared king. Prior to his coronation he issued his writs to the sheriffs to proclaim his peace, wherein he says, “ since  
 “ Edward, late king of England, our father, by  
 “ the counsel and assent of the prelates, earls,  
 “ barons, and other great men, and of the com-  
 “ mons of the said kingdom has removed him-  
 “ self, &c. we yielding, &c. by the counsel  
 “ and advice of, &c. and of the commons  
 “ aforesaid, have taken upon us the govern-  
 “ ment, &c.”

The parliament called at the end of the late reign continued sitting, and the estates of those who were engaged in the late dissensions, and of which they had been deprived, were restored to them by the assent of the whole parliament.

In the preamble to the statutes made at the first parliament of Edward the Third, the acts were passed at the petition of the commons pre-



sented to the king in his council of parliament by the assent of the prelates, earls, barons, and other great men, and it is thus expressed: "The king hath granted for himself and his heirs the articles underwritten." This form was again used in the parliament of Westminster during the fifth, and continued in the succeeding parliaments until the fifteenth year of his reign, when the laws are expressed to be made "by the assent of the prelates, earls, barons, and other great men, and of the commonalty of the realm summoned to the said parliament."

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In the first year of his reign he held a great council, where he not only confirmed to the citizens of London the privileges granted to them in former reigns, but gave them new ones, ordaining that the lord mayor or his deputy should sit as king's chief justice in all places within the liberties of the city, and that every alderman who had been mayor should be justice of peace within his own ward. He also gave the citizens the fee farm rent of London for three hundred pounds per annum, and declared that the lawful franchises of the city should not be seized at the hands of the king, but only in case of abuse or misusage, or for treason or rebellion countenanced or done by the whole city; and that Southwark should be under the

Coke,  
2 Inst.



CHAP. government of the city, and that the mayor of  
XII. London, as bailiff of Southwark, should depute  
under him the bailiff of the borough.

Roll. Parl.  
9, Ed. 3.  
Cotton's  
Abridge.  
15.

Magna Charta was confirmed ten times by Edward the Third. Having settled his affairs in Scotland he returned to York, where in the ninth year of his reign he summoned a parliament, in which it was enacted that the great charter, and that of the liberty of the forest, as well as other good statutes should be observed, and whatever was obscure should be fully explained. In the year following many laws were enacted for the general good of the realm; and in the fourteenth year of his reign the great charter and that of the forest were required to be holden in all points, and that the city of London, and all other cities and boroughs, should enjoy the franchises and customs which they had held and enjoyed in past times.

The act passed in the fourth year of this reign is thus expressed: "It is *accorded* that  
"a parliament should be held *every year once*,  
"and *oftener if need be.*" The presumption is strong, that they to whom the king accorded this statute, considered the service in parliament as a principle founded on ancient usage which the law confirmed, otherwise they would not have petitioned the crown to call them to it so often, and bound the king by an express



law not to omit or neglect it. Nothing appears CHAP.  
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either in the wording of it, or in the history of  
the times, to induce one to believe that it  
caused any change in the constitution of the  
country.

No circumstance of any importance either to  
the dignity of the crown, or the welfare of the  
subject, was suffered to pass without the know-  
ledge and assent of the commons in parliament,  
and when Edward in the thirteenth year of his  
reign demanded an aid, the lords granted him Cotton's  
Records,  
17.  
Gurd. Parl.  
285.  
a tenth of all the corn in their demesnes, and  
the tenth fleece of wool, but the commons  
made answer, "that they knew and tendered 4 Inst. 14.  
"the king's estate, and were ready to aid the  
"same, only they durst not agree without  
"further conference with their counties, and  
"praying respite for another time, promised to  
"travel to their counties," which being  
allowed, it consequently appears that such con-  
ference is warrantable by the law and usage of  
parliament.

Although the commons were so modest in  
the affairs of the nation as to peace and war,  
yet in matters relative to grievances they were  
free in presenting petitions to the king for  
redress. And when the judges outstepped the  
bounds of the constitutional jurisprudence,  
when the king's ministers, contrary to the Cotton's  
Records,  
passim.  
charters of Edward the First, for purlieu of the



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forest, afforested that which was diafforested, and put into regard that which was out of regard, contrary to the granted charters, and brought vexatious suits against the people, the king frequently answered, Let any man complain, and he shall find remedy. Such answer of the king was a satisfaction to the subjects, for redress of the grievance soon followed the complaint; nor did the king end the parliament until all petitions were presented and answered.

Edward the Third, in the thirty-sixth year of his reign, again enacted, that "a parliament should be held *every year*," and for more certainty the words if "need be," omitted. At this time prorogations were rare, and if there were any, yet fresh summonses were to be issued for a new parliament once a year at least. The custom of proroguing and adjourning parliaments was introduced by Richard the Second; but even their proclamation was made in Westminster Hall, that all who had business in parliament must bring it in, for prorogation would take place on such a day.

Rapin,  
N. 24,  
p. 432.

It was customary in those times if the parliament was not *quite full* at the first meeting to adjourn for a day or two, till the absent members came in. The lords sometimes, and the commons frequently, were called by name the first day of the sitting of parliament, and



such of them as were absent without cause, were both reprimanded and fined. The statute passed in the fifth year of Richard the Second, enforcing the attendance of all those summoned to parliament has been alleged as an argument to shew how unwillingly those national councils were attended, and that it required the performance of that duty by a particular law ; but the disturbed and tumultuous state of those times, when it was dangerous to pass from one part of the kingdom to another, may better account for this statute, and that its main object was to enforce the attendance of the *spiritual barons*, as their frequent desire of a total separation from the laity in all acts of government made them remiss in the performance of their duty.

It is of the utmost importance to mention, that in the roll of the 51st of Edward the Third, n. 45, are these words : “ Pourceque, de commune droit du royaume, de chascun comté d’Engleterre sont et seront eleus deux personnes o’estre à parlement por le commune de dits comtés.” As this record testifies two persons were to be elected to parliament for the commonalty of every county, *by the common law of the realm*—the beginning of this law, or usage, is much more ancient than the reign of Henry the Third, and may be



CHAP. traced to the earliest institutions of the Anglo-  
 XII. Saxon government.

The following counties, cities, and boroughs,  
 sent members in this reign.

|                  |                 |
|------------------|-----------------|
| Bedford county,  | Derbyshire,     |
| Bedford town,    | Derby town,     |
| Berkshire,       | Devonshire,     |
| Newbury,         | Barnstaple,     |
| Reading,         | Bradneysham, or |
| Wallingford,     | Bradninch,      |
| Windsor,         | Dartmouth,      |
| Buckinghamshire, | Exeter city,    |
| Agmondesham,     | Exmouth,        |
| Great Marlow,    | Fremington,     |
| Wendover,        | Honiton,        |
| Wycombe,         | Modbury,        |
| Cambridgeshire,  | Plympton,       |
| Ely city,        | Plymouth,       |
| Cambridge,       | Tavistock,      |
| Cornwall county, | Torrington,     |
| Bodmyn,          | Totness,        |
| Launceston,      | Dorsetshire,    |
| Helstone,        | Bridport,       |
| Liskeard,        | Blandford,      |
| Lestwithiel,     | Sherbourne,     |
| Truro,           | Dorchester,     |
| Pollwum,         | Lyme Regis,     |
| Cumberland,      | Melcombe Regis, |
| Carlisle,        | Poole,          |



|                     |                     |
|---------------------|---------------------|
| Shaftesbury,        | Sandwich port,      |
| Wareham,            | Winchelsea port,    |
| Weymouth,           | Lancaster county,   |
| Essex county,       | Lancaster town,     |
| Chelmsford,         | Preston,            |
| Harwich,            | Leicestershire,     |
| Colchester,         | Leicester town,     |
| Malden,             | Melton Mowbray,     |
| Glostershire,       | Lincolnshire,       |
| Gloster city,       | Lincoln city,       |
| Bristol city,       | St. Botolph,        |
| Herefordshire,      | Spalding,           |
| Hereford city,      | Waynfleet,          |
| Bromyard,           | Grimsby,            |
| Ledbury,            | Stamford,           |
| Leominster,         | Middlesex,          |
| Ross,               | London city,        |
| Weobly,             | Norfolk,            |
| Hertfordshire,      | Norwich city,       |
| Berkhampstead,      | Yarmouth,           |
| Hertford town,      | Lynn,               |
| St. Albans,         | Northampton county, |
| Bishops Storteford, | Northampton town,   |
| Huntingdonshire,    | Northumberland,     |
| Huntingdon,         | Newcastle,          |
| Kent,               | Nottinghamshire,    |
| Canterbury city,    | Nottingham town,    |
| Rochester city,     | Oxfordshire,        |
| Dover port,         | Oxford city,        |
| Romney port,        | Chipping Norton,    |



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|                     |                    |
|---------------------|--------------------|
| Witney,             | Stafford town,     |
| Doddington,         | Lichfield city,    |
| Woodstock,          | Newcastle,         |
| Rutland county,     | Suffolk county,    |
| Salop,              | Dunwich,           |
| Bridgenorth,        | Ipswich,           |
| Shrewsbury,         | Surrey,            |
| Somersetshire,      | Bletchingly,       |
| Axbridge,           | Guildford,         |
| Bath city,          | Kingston-upon-     |
| Wells city,         | Thames,            |
| Chard,              | Ryegate,           |
| Dunster,            | Southwark,         |
| Glastonbury,        | Sussex,            |
| Langport,           | Arundel,           |
| Montacute,          | Bramber with Stey- |
| Stoke Curry,        | ning,              |
| Ware,               | Chichester city,   |
| Bridgewater,        | East Grinstead,    |
| Ilchester,          | Hastings port,     |
| Milbourn port,      | Hythe port,        |
| Taunton,            | Horsham,           |
| Southampton county, | Lewes,             |
| Southampton town,   | Midhurst,          |
| Winchester city,    | Rye port,          |
| Alton,              | Seaford borough,   |
| Andover,            | Shoreham,          |
| Basingstoke,        | Warwickshire,      |
| Portsmouth,         | Warwick town,      |
| Stafford county,    | Coventry city,     |



Westmoreland,  
Appleby,  
Wiltshire,  
Bedwyn,  
Calne,  
Chippenham,  
Cricklade,  
Devizes,  
Downton,  
Ludgershall,  
Malmesbury,  
Mere,  
Marlborough,  
Salisbury,  
Old Sarum,  
Wilton,

Worcestershire,  
Worcester city,  
York county,  
York city,  
Beverley,  
Haydon—*one pre-  
cept, no election,*  
Hull,  
Ravenser,  
Richmond—*one pre-  
cept, no election,*  
Ripon—*two precepts,  
one election,*  
Scarborough,  
Doncaster.

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## CHAPTER XIII.

*State of the Representative System in the time of Richard the Second.*

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IN the third year of Richard the Second, the commons petitioned, that as the king was of age, his standing council might be discharged, and that a proper person should be appointed to give answers to foreign ministers.

Tyrrel's  
Hist. of  
England.

The expenses which had been incurred by the king's expeditions to France and Scotland having been laid before the commons in parliament, Sir John Gildesburgh, their speaker, in the presence of the king, prelates, and peers, demanded a more clear declaration of what had been said to them, especially what sum was necessary to support the charges, and praying that no more be required than sufficient to defray the expense. As the sum demanded, being no less than one hundred and sixty thousand pounds, was deemed by them exorbitant and insupportable, they desired a mitigation, and that the clergy should contribute the third part, since they possessed a third part of the revenues of the kingdom, which they refused to



do, because their grants were never made in parliament. At last the lords and commons agreed to give the groats for every person in the kingdom, beggars excepted, and no member of the parliament was allowed to be collector of this money.

The commons in parliament, in the seventh year of Richard the Second, made complaints of the government of the realm, and of the abuses which existed in every part of the state, particularly in the law departments. The king consented that certain prelates and lords should be appointed to examine into these abuses; the commons, enumerating their grievances, demanded redress; this he refused to do till they had granted him a further supply; to which they would not accede.

By a statute of Richard the Second, passed in the fifth year of his reign, it is enacted, “ That  
“ all and singular persons and commonalties,  
“ which from henceforth shall have the summons of the parliament, shall come from  
“ henceforth to the parliaments, in the manner  
“ as they are bound to do, *and have been accustomed within the realm of England of old times.* And if any person of the same realm,  
“ which from henceforth shall have the said  
“ summons, (be he archbishop, bishop, abbot,  
“ prior, duke, earl, baron, banneret, *knight of the shire, citizen of city, burgess of borough,*



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“ or other singular person or commonalty) do  
“ absent himself, and come not at the said  
“ summons, (except he may reasonably and  
“ honestly excuse himself to our lord the king)  
“ he shall be amerced, and otherwise punished,  
“ according as of old times hath been used to be  
“ done within the said realm in the said case.”

No distinction is made in this statute between the antiquity of summons to parliament sent to the greater nobility, and of those to citizens, burgesses, and knights of the shires. All are spoken of as having been accustomed of old times to come hither, and the ancient penalties for non-attendance are referred to as the rule for punishing those who should absent themselves in future. It is difficult to reconcile such expressions to those who date the admission of the commons into the parliaments of this kingdom, so near to the time when this statute was enacted; as the *people* were always a component part of the national councils, a truth which has been fully established by existing records, and authorities of historians who wrote in the times of which we are treating.

It is certain, that ordinary business, and even some arduous affairs of the kingdom, were frequently determined by the nobles alone, who met, according to ancient custom, three times in a year, on Christmas, Easter, and Whitsuntide, but they were authorised *by permission*



and *common consent* to exercise that degree of parliamentary power. It might have been inconvenient to summon so often, and from the most remote parts of England, all the citizens, burgesses, and knights of the shires, nor could their constituents have supported the charge of their wages and travelling expenses.

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The king was always present in these assemblies; and we are told that William the First kept them at Christmas at Gloster, at Easter in Winchester, and at Whitsuntide in Westminster; but it also appears he convened them occasionally in some of his other cities. This change of place was for the more ready dispatch of business, and that all parts of the country might enjoy the benefits of those meetings, wherein our monarchs gave splendid feasts, and displayed their utmost state and magnificence. It frequently happened that the occasion of calling the commons to parliament fell in with those festivals, and summons being sent to the counties, cities, and boroughs, converted such councils into full and complete parliaments. Among those present in these parliamentary assemblies, we find many of the inferior secular clergy, an order of men who were of too much account in the state not to have had a share in the legislature, either personally, or by representatives. There are no writs of summons extant, which require proctors, "*procuratores*,"

Chron.  
Sax.  
Malmesb.  
and Hunt-  
ingdon.

Ord. Vital.  
l. iv.



CHAP.  
XIII.Annal.  
Burton,  
p. 355.Rot. Parl.  
21 R. 2.Append. to  
Burnet's  
Hist. of the  
Reform.

to be sent for them to parliament before the eighteenth of Edward the First, but the whole clergy were so represented in the thirty-ninth of Henry the Third. Many passages in more ancient historians evidently prove, that not only the attendance of the inferior clergy in parliament, but this kind of representation of them, had been customary long before. In later times, a desire of independence on the state, to which they were excited by the pope, caused them to withdraw gradually from any attendance whatever in parliament, so that after the reign of Henry the Sixth, they are hardly ever mentioned as being present. Although in the twenty-first year of Richard the Second the commons had shewn, in a petition to the king, "that before these  
 " times many judgments and ordinances made  
 " in the times of the progenitors of our lord the  
 " king in parliament, had been repealed and  
 " disannulled, because the state of the clergy  
 " were not present in parliament at the making  
 " of the said judgments and ordinances." The clergy continued to tax themselves as a separate body till after the Restoration, when they were taxed in the same manner, and conjointly, with the rest of the commons, and have ever since been represented in parliament by the same persons ; thereby embodying them with the laity, and preventing a church interest distinct from that of the people. And it is remarkable, that this important



alteration in the state was made *without any law*, by agreement of the clergy.

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In the tenth year of Richard the Second, the commons sent the following message to the king, in which they stated that, “ We have it settled  
“ and confirmed by ancient constitution from a  
“ laudable and approved custom, which none  
“ can gain-say, that the king ought to assemble  
“ his nobles and commons of the kingdom *once*  
“ *a year* unto his parliament, as the highest  
“ court of the realm, in which all equity ought  
“ to shine bright, without any spot, clear as the  
“ sun, and wherein poor as well as rich may  
“ find a never-failing shelter for their refresh-  
“ ment, by restoring tranquillity and peace, and  
“ removing all kinds of injuries ; where all pub-  
“ lic grievances, or errors, are to be redressed ;  
“ and wherein, with the most prudent council,  
“ the state and good government of the king-  
“ dom is to be treated of ; and considering that  
“ the king and nation’s foes at home, and their  
“ enemies abroad, may be discovered and re-  
“ pulsed by such means as most conveniently  
“ and honorably may be done ; and also with  
“ wholesome deliberation therein to foresee and  
“ order how the necessary burthens of the king  
“ and kingdom may, with most ease, (the pub-  
“ lic wants considered), be supplied: they con-  
“ ceive also, that since they are to support all  
“ public charges incumbent, they should have



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“ the supervisal how, and by whom, their goods  
“ and fortunes are to be expended : they say,  
“ moreover, that this is their privilege by an-  
“ cient constitution ; that if the king wilfully  
“ estrange himself from his parliament, (no in-  
“ firmity or necessary cause disabling him),  
“ but obstinately, by his ungovernable will,  
“ shall withdraw himself, and be absent from  
“ them for the space of forty days, not regarding  
“ the vexation of his people, nor their grievous  
“ expenses ; that then, from that time, it shall be  
“ lawful for all and every of them, without any  
“ damage from the king, to go home, and return  
“ into their own countries : and now you, for a  
“ longer time, have absented yourself ; and, for  
“ what cause they know not, have refused to  
“ come among them.”

The king, in his answer, declared his intention to call in the assistance of the French to support him in the attack he meditated on the liberties and privileges of the people. The barons replied, that such a step would lead to his destruction ; and that all his misfortunes were owing to his ministers, who governed him and the kingdom ; and unless some means were used to put an end to these grievances, the state would be ruined ; and by the ancient constitution, if the king refused to govern by the laws and statutes of the realm, it was lawful for his people, by their full and free assent, to depose him.



In this parliament eleven commissioners were named to regulate all abuses which had arisen since the reign of Edward the Third; and to give it greater effect, the king granted a commission under his great seal.

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Sir Simon Burley was called to account by the commons for a large sum of the public money he had wrongfully expended; and not giving a satisfactory answer, was committed to the tower.

King Richard, intending to call a parliament in the twenty-first year of his reign, first summoned the several sheriffs, and gave them a charge to suffer none to be elected and returned members to the parliament, who would not promise to agree to the king's measures; at the same time declaring he would raise an army to enable him to punish such of his subjects as should offer to oppose his intentions, and asked them what force each county could assemble. The sheriffs returned for answer, that the people would never bear being deprived of the freedom of elections; and in regard to raising an army, they would never take up arms to oppose those barons who had gained the affections of the people by defending their rights and privileges.

Rapin,  
No. 24,  
p. 430.

When the immortal Alfred had overthrown the oppressors of his country, he thought the work of a king only begun: he devoted the remainder of his reign to the correcting of abuses,



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establishing justice, and laying the broad foundation of liberty and happiness; but we find Richard endeavouring to overturn the constitution of the kingdom, and violating its ancient liberties sanctioned by the wisdom of its former princes, to render himself despotic.

Brady,  
vol. ii 404.

Cott. Re-  
cor. 374.

4 Inst. 42.

Burn. Re-  
form. 3rd  
part, 234.

The commons were returned in this parliament according to the king's directions; and on the last of their sitting they made known to the king that they had before them several petitions not read or answered; and that there were other matters which could not be answered or determined, by reason of the shortness of time; they therefore prayed that if it would please the king to give full power to certain lords and others, whom he should appoint, to examine, answer, and dispatch, the petitions and matters which remained undetermined. To this the king assented; and, by authority of parliament, the Duke of Lancaster, ten other lords, and six commoners, were chosen to determine such unfinished matters; which, Lord Coke says, is against the dignity of parliament. And Bishop Burnet, in his History of the Reformation, particularly observes, "that nothing can so effectually ruin this nation, as a bad choice of parliament men; therefore it is the constant character of a good ministry, who design nothing but the welfare and happiness of the nation, to leave all men to a due freedom in all their elec-



tions ; so it is the constant distinction of a bad ministry, that have wicked designs, to try all methods of practice and corruption possible, to carry such an election, that the nation being ill represented by a bad choice, it may be easy to impose any thing on a body of vicious, ignorant, and ill principled men, who may find their own mercenary account in selling and betraying their country."

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The liberties of England can never be in danger from a free parliament made by the choice of the people, without the interposition of the king or his ministers.

The Duke of Gloster being murdered at Calais, the Earl of Arundel was executed, the Earl of Warwick banished to the Isle of Man, the Archbishop of Canterbury banished, and his estates confiscated, Lord Cobham also banished, and many other patriots treated with such tyranny and oppressive severity, that the rest were intimidated ; and the people being oppressed by their own representatives, and curbed by men in power, found no other means of safety but to feign an approbation of what they durst not contradict, nor could by any means prevent.

The scale of the people was not weighty enough to form a proper counterpoise either to the regal or aristocratical power ; and this must be evident to any person who reads the history



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of this kingdom, or examines into its laws; and it appears from many rolls of parliament, that the commons declined to give their opinion or advice, in many instances, to the king, in certain matters of state, but submitted their judgment to the king and his council, or to them and the lords. We find in the seventh year of Richard the Second, that the commons being required to give their opinions on a treaty of peace with France, before its conclusion, declared they knew not what to say, because in the articles were contained many terms of the civil law which they understood not. And in the seventeenth of the same king they pleaded want of capacity to give their judgment or advice on the articles of a peace, in which were contained the law terms of *homage, lige, souveraineté, et ressort*, for which they referred themselves to what the lords, *knights*, and judges had before agreed upon. The knights of the shires were not supposed to be under the same incapacity as the rest of the commons. The revival of learning in the sixteenth century, and the expansion of it among the gentry during the next hundred years contributed to fill the house of commons with able men, who had no occasion to have recourse to the other house, or to the king's council, for explanation of terms of law, or the articles of a treaty with any foreign power. It will, however, be proper to observe that,



even in the earliest times, all the commons appear to have given their advice with great freedom in matters concerning the internal government and order of the kingdom. And it is remarkable what regard was shewn to parliaments even in points which belonged to the royal prerogative. To govern *by parliaments* has been the policy of this kingdom, under the wisest and best kings, from the earliest times.

What is a house of commons if it be not a check on the crown, in which reside all the executive powers of government? These executive powers would be fatal to society, if a sufficient check upon them was not provided. This is a truth written in the tears and blood of mankind in every age and country. Is this check to be appointed by him whom it is intended to curb? Or, when appointed by others, is he, by court influence, to convert this curb into an impetus of that very power it was meant to counterbalance and restrain?

Richard having removed all obstacles to the attainment of absolute unlimited power, endeavoured to fix and establish his arbitrary measures. While he went to Ireland with all his force to suppress the rebellion which had broke out in that country, the people of England, under general discontent, availed themselves of the king's absence to invite the Duke of Lancaster; who, relying upon the impatience of the people



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to throw off the yoke which galled them so severely, accepted the invitation, and was joined on his landing by numbers of the nobility, and others well affected to his cause. The gates of London were thrown open to him, and the citizens hailed him as their deliverer from tyranny and arbitrary power.

Although Richard made some endeavours to recover his dominions, yet they were fruitless. He surrendered himself into the duke's hands, and was sent to the tower. Articles were exhibited in parliament against him; when the king was solemnly deposed, like Edward the Second, and signed a resignation of his crown, state, and dignity.

Whilst he had free parliaments he could not put in execution his projects for arbitrary government, which he endeavoured to establish by every illegal and indirect means to which he was prompted by a corrupt ministry. Such a ministry, assisted by a corrupt parliament, may invade the rights and privileges of the people; and, becoming the tools of an ambitious prince, may, at last, undermine and destroy the liberty of the nation. It has been often and well asserted by the ablest politicians, that should that time ever arrive wherein a monarchy limited by law is overturned, its ruin must come from St. Stephen's chapel and Westminster hall; a free parliament and upright judges are the bulwarks of the



English constitution, an English monarch at the head of a free parliament, with upright ministers, can never envy the grandeur or power of any despotic prince. And unfortunate have been those kings, who have endeavoured to stretch prerogative beyond the legal constitution.

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It may be necessary to mention in this place the wages which were paid to the members of the house of commons, as fixed by an act passed in this reign. Certain *tenants in ancient demesne*, set forth a claim before the fifteenth of Edward the Second, that they ought not to be charged with wages to the knights of the shires, for as much as they and their ancestors, tenants of the same manor, had from time immemorial, been always exempted, by custom, from the expenses of knights, sent by the community of their county to the parliaments of the king, and his royal progenitors.

Tyrrel's Appen-  
dix, part  
2, vol. 3. p.  
60-61.

If no wages had ever been given to knights of the shires, till the reign of Henry the Third, it would have been preposterous for these men to tell the grandson of that king, that they had enjoyed a customary privilege of not paying such wages from time immemorial, which is defined by our law books, to be a time antecedent to the beginning of the reign of King Richard the First, and must be supposed when



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this exemption was made, to go much farther back.

Rot.  
Claus.  
28 Edw. I.  
m.12 dorso.  
Tyrrel's ap-  
pendix,  
60, 61.

In the writs for the expenses of knights of the shires, in the twenty-eighth year of Edward the First, it is said, "the county should pay "for them, prout alias in casu consimili fieri "consuevit," words which imply a custom. The writ, however, of the forty-ninth of Henry the Third, has not these words; it appears that the expenses of the knights had been very great, because their attendance had been longer than expected; but that the counties having before contributed largely to other public expenses for the defence of the kingdom, they should not be charged to this too highly. It is very probable therefore, that as their expenses had been greater than usual, and the king was unwilling to load the counties, which had been previously much burthened with too heavy a charge—the words "prout alias in casu consimili fieri consuevit" were left out as being no proper rule to proceed on in this case.

Brady's  
Anots. to  
Petty, p.  
141. claus.  
Rol. 42.  
H. 3. m. i.  
dorso.

Dr Brady has given us a writ of expenses allowed to four knights of each county in the kingdom, for attending upon the parliament in the forty-second year of Henry the Third, not as members, but on an extraordinary commission of inquest into all excesses, transgressions, and injuries, done and committed, by justices, sheriffs, bailiffs, or any other person within the



respective counties. No sum is fixed, but they are to have "*Their reasonable expenses, in going, returning, and for remaining to trans-*" CHAP.  
XIII.  
*act the said business in the parliament then assembled."* Dr. Brady supposes that the words "*prout alias in casu consimili fieri consuevit*" got into ancient writs for the expenses of knights, citizens, and burgesses, although it is more likely that the form of this writ, sent on a particular occasion was taken from those, than that this was the precedent upon which they were grounded.

Henry the Third, in the year 1258 sent four knights into each county to inquire and make report to the king and his council, of the grievances which had arisen, and these commissioners had wages paid them, which were levied by the sheriffs in their several counties by virtue of the king's writs. Brady's  
Tracts, 141.

The wages of the knights, citizens, and burgesses, were levied by virtue of the king's writ, before any act of parliament was made to regulate the expenses; in the writ the sheriffs were ordered to levy four shillings a-day for each knight, and two shillings a-day for each citizen, and burgess. During the time of their service in parliament, as appears in the rolls of Edward the Third, and Richard the Second, *de expensis militum*.

The commons in the first year of Richard the Cott.  
Recor. 164.



CHAP.  
XIII.

Register  
191 261.

Second, petitioned the king in parliament, that all persons, having lay-fee, might contribute to the expenses of knights, citizens, and burgesses, to which the king answered that the lords of the realm would not thus lose their liberties and privileges, and that the form of the ancient writs for parliamentary wages was to levy *de communitate*. By the writ in the register it appears that tenants in ancient demesne, and copyholders, were exempted from paying parliamentary wages, by these words, “ de expensis militum non levandis ab hominibus de antiquo dominico, nec ab nativis.”

The first statute for levying the expenses of knights coming to parliament was enacted in the twelfth year of the reign of Richard the Second, and was in confirmation of the common law, the words of the statute being, “ that the said levying be made as it hath been used before this time.”

The other part of the act answers in a great degree to the petition of the commons in the first year of his reign, as it enacts. “ That if any lord, or any other man spiritual or temporal, hath purchased any lands or other possessions, that were wont to be contributory to such expenses, before the time of such purchase, that the said lands, tenements, and possessions, and the tenants of the same, be contributory to the said expenses, as the said



“lands, tenements, and possessions were wont  
 “to do before the time of the same purchase.”

CHAP.  
XIII.

In this reign we do not find by the writs or returns, that any new city or borough were summoned to send members to parliament, but that the following boroughs, which had sent representatives in the preceding reigns was omitted.

| <i>Boroughs.</i>                                                                                              | <i>Counties.</i> |
|---------------------------------------------------------------------------------------------------------------|------------------|
| Dunstable . . . . .                                                                                           | Bedford.         |
| Newbury . . . . .                                                                                             | Berks.           |
| Agmondesham, Great Marlow<br>Wendover . . . . .                                                               | Bucks.           |
| Ely . . . . .                                                                                                 | Cambridge.       |
| Lydeford, Polurun . . . . .                                                                                   | Cornwall.        |
| Ashburton, Bradneysham, Fre-<br>mington, Honiton, Modbury,<br>Oakhampton, Plymouth,<br>South Molton . . . . . | Devon.           |
| Poole . . . . .                                                                                               | Dorset.          |
| Chelmsford, Harwich . . . . .                                                                                 | Essex.           |
| Bromyard, Ledbury, Ross,<br>Weobly . . . . .                                                                  | Hereford.        |
| Berkhamstead, Storteford, St.<br>Albans . . . . .                                                             | Hertford.        |
| Tunbridge . . . . .                                                                                           | Kent.            |
| Lancaster, Preston . . . . .                                                                                  | Lancaster.       |
| Melton-Mowbray . . . . .                                                                                      | Leicester.       |
| Spalding, St. Botolph, Wain-<br>fleet, Stamford . . . . .                                                     | Lincoln.         |
| Bamburg, Corbrigg . . . . .                                                                                   | Northumberl.     |



CHAP.  
XIII.*Boroughs.**Counties.*

|                                                                                                                                             |              |
|---------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| Retford . . . . .                                                                                                                           | Nottingham.  |
| Burford, Chipping-Norton,<br>Doddington, Witney, Wood-<br>stock . . . . .                                                                   | Oxford.      |
| Axbridge, Chard, Dunster,<br>Glastonbury, Langport,<br>Montacute, Stoke-Currey,<br>Watchet, Ware, Milbourn-<br>Port . . . . .               | Somerset.    |
| Alresford, Alton, Andover, Ba-<br>singstoke, Christchurch,<br>Fareham, Odiham, Overton                                                      | Southampton. |
| Lichfield . . . . .                                                                                                                         | Stafford.    |
| St. Edmund's-Bury, Orford . .                                                                                                               | Suffolk.     |
| Farnham, Kingston - upon -<br>Thames . . . . .                                                                                              | Surrey.      |
| Bramber with Steyning, Seaford                                                                                                              | Sussex.      |
| Coventry . . . . .                                                                                                                          | Warwick.     |
| Bradford, Mere, Highworth . .                                                                                                               | Wilts.       |
| Bromsgrove, Dudley, Kidder-<br>minster, Pershore, Droitwich                                                                                 | Worcester.   |
| Allerton, Beverly, Haydon,<br>Malton, Pontefract, Rich-<br>mond, Ripon, Doncaster, Jer-<br>vall, Pickering, Ravenser,<br>Tyckell, . . . . . | York.        |

In all, eighty-eight boroughs, making one hun-  
dred and seventy-six members, out of two hun-  
dred and thirty-six places which had sent.



## CHAPTER XIV.

*State of the Representative System in the Time of  
Henry the Fourth.*

THE right of Henry the Fourth to the crown of England was recognized by act of parliament in the first year of his reign, and which remains on the parliament roll. This act not only settled the crown on Henry the Fourth, but also entailed it upon his eldest son Henry, and if he died without issue, then upon his other sons successively.

CHAP.  
XIV.

Cott. Recor.  
666. 391.

The king's title needing all the support which could be obtained, he courted a popular party, keeping fair with his parliament in the former part of his reign, until imagining himself securely fixed on his throne, and being forgetful of the mal-administration of his immediate predecessor, he began to govern with too much authority. This occasioned the patriots of both houses to concert such measures for the preservation of their liberties and privileges, as caused the king to desist from the execution of his design.

MS. Journ.  
of Parl.  
259.

In the ninth year of his reign demanding a subsidy, some of his favourites acquainted him with the manner in which it was debated in

Gurdon,  
Parl. 304.  
Cot. Recor.  
465.



CHAP.  
XIV.

9 H. 4, 1.

parliament. Dissensions and animosities then arose between the court and country party, to appease which the king gave his assent to an act of confirmation of liberties. And both houses of parliament agreed upon a standing order, that “in all parliaments, in the absence of the king, “it should be lawful to the lords by themselves, “as to the commons by themselves, to debate “of all matters touching the realm, and of the “remedies, and not to disclose the same to the “king before a determination thereof made, and “that by the mouth of their speaker.”

In regard to the demanding of aids or subsidies, it was ever pregnant with danger to allow any latitude in the raising of money without the consent of parliament; and although there might be danger attending the restraint in cases of real and urgent necessity, or where advantages of importance might be lost by waiting until the time when the supply could be granted by parliament in the usual forms, still it has ever been one cause of the too frequent violations of this great and acknowledged right of parliament, as well as a specious pretence on many occasions, even in our days.

But the difficulty has been obviated by the expedient resorted to of making provision for such contingencies by *votes of credit* in time of war, and on some occasions in time of peace. But great care ought to be taken that this trust,



which the parliament reposes in the govern-  
ment, should be *limited as to the sum*, and given  
under the obligation of being subject to *strict*  
*investigation of the expenditure.*

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XIV.

The preamble to the statutes of the ninth of Henry the Fourth, passed at the close of the parliament, indicates some uneasiness in the people, and the king's readiness to redress their grievances. Not being able to obtain the subsidy, he prolonged the sitting, so as to gain it by *duress*; for the sessions of parliament being very short in those times, the members chose rather to comply, than to be kept too long from home.

In the parliament held at Coventry of the sixth of this reign, there were no lawyers; the sheriffs being commanded by the king not to return any that were learned in the law, wherefore this parliament was afterwards called "*parliamentum indoctum*,"—the lack-learned parliament. Finding it difficult to raise a supply sufficient to answer the king's expectation, a member of the house of commons proposed seizing the lands and goods of the church; but the archbishops and bishops, with the assistance of some temporal lords, prevented the intended seizure. This parliament being prorogued to the fourteenth of January to meet at Westminster, gave an exorbitant tax to the king, the records of which were burnt, that such a pre-

Stowe.

Howse,  
330.

4 Inst. 48.

Rapin, Parl.

Sum. 366.

Acta regia,

No. 7, p. 67.

Daniel, part

ii. fol. 89.



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XIV.

Mo. Parl.  
cap. 5.  
Stowe,  
Howse,  
330.

Daniel, part  
ii. fol. 76,  
77, 89.

cedent might not appear to posterity. This tax was twenty shillings on every knight's fee, twenty pence on every twenty pounds value inland, and twelve pence upon every twenty shillings in goods.

In the tenth year of his reign, parliament again moved to have the church lands applied to the use of the public, but the king forbade their proceeding.

Henry the Fourth used many unconstitutional methods to have such members chosen to sit in parliament as were devoted to his will; but the people complaining of the undue elections of their representatives, and retaining a proper sense of the high and important trust they delegated to them, good and wholesome laws were produced, which direct and regulate the form of county elections, and afford a remedy against abuses and innovations founded upon unjustifiable pretensions.

7 H. 4, 15. In the seventh year of his reign was passed the first act which regulates the duty of sheriffs in regard to elections, and the manner in which they were henceforth to make the returns. And 11 H. 4. 1. in the parliament of Westminster of the eleventh of his reign, an act was passed to strengthen that of the seventh, adding a penalty of one hundred pounds upon sheriffs who did not regularly proceed in elections, or made illegal returns, to be recovered by order of the justices of assize;



and that knights of the shires unduly elected and returned should forfeit their wages of parliament. CHAP.  
XIV.

Before the passing these statutes, the sheriffs Rapin. were often influenced by the court to make partial returns of members, and those particularly who were attached to the ministers, a circumstance of such importance, that it requires the utmost vigilance to prevent the fatal consequences arising from such a measure; the liberties and properties of the people depending upon the freedom of election, and the impartial return of representatives. By representatives being chosen through the influence of a corrupt ministry, liberty receives an incurable wound, and the constitutional rights of the people are perverted and destroyed: and while electors are to be found who will sell their votes to representatives, who will in turn sell their liberties to reimburse themselves, parliamentary reform will ever appear a phantom that eludes the touch.

The succession to the crown was settled and 7 H. 4, 2. confirmed in parliament on the eldest son of the king, and in the event of failure of issue in him, on his other sons.

The house of commons petitioned the king, that they might have advice and communication with certain lords relative to matters of importance for the common interest of the kingdom, which petition he granted, but with a protest Cot. Recor.  
416—465,



CHAP.  
XIV.

which he ordered to be inserted in the parliament roll, that he did it not from custom, but by special grace.

In the parliament of the second of Henry the Fourth, the commons declared, that it was not the custom to grant any subsidy before they had received answer to their petitions; and because it might happen, that some of their members, to please the king, and to procure their own advancement, might relate matters debated in the house before they were determined, they petitioned his majesty not to give credit to such reports. To this the king answered, that the commons should have free deliberation to debate in what concerned the advancement and honor of the kingdom, and that he would never hear, or give credit to any such relation till it was sent by the whole house.

In this reign the following cities, boroughs, and cinque-ports, sent representatives to parliament in addition to the counties.

| <i>Cities, Boroughs, &amp;c.</i>                              | <i>County.</i> |
|---------------------------------------------------------------|----------------|
| Bedford.....                                                  | Bedford.       |
| Reading, Wallingford, Windsor                                 | Berks.         |
| Wycombe.....                                                  | Bucks.         |
| Cambridge .....                                               | Cambridge.     |
| Bodmyn, Launceston, Helstone,<br>Liskeard, Lestwithiel, Truro | Cornwall.      |
| Carlisle .....                                                | Cumberland,    |
| Derby.....                                                    | Derby.         |



| <i>Cities, Boroughs, &amp;c.</i>                                                                     | <i>County.</i> |
|------------------------------------------------------------------------------------------------------|----------------|
| Barnstaple, Dartmouth, Exeter,<br>Plympton, Tavistock, Tor-<br>rington, Totness .....                | Devon.         |
| Bridport, Dorchester, Lyme-<br>Regis, Melcombe - Regis,<br>Shaftesbury, Wareham, Wey-<br>mouth ..... | Dorset.        |
| Colchester, Malden .....                                                                             | Essex.         |
| Bristol, Gloster .....                                                                               | Gloster.       |
| Hereford, Leominster .....                                                                           | Hereford.      |
| Hertford .....                                                                                       | Hertford.      |
| Huntingdon .....                                                                                     | Huntingdon.    |
| Canterbury, Dover port, Ro-<br>chester, Romney port, Sand-<br>wich port .....                        | Kent.          |
| Leicester .....                                                                                      | Leicester.     |
| Great Grimsby, Lincoln .....                                                                         | Lincoln.       |
| London .....                                                                                         | Middlesex.     |
| Yarmouth, Lynn, Norwich ..                                                                           | Norfolk.       |
| Northampton .....                                                                                    | Northampton.   |
| Newcastle .....                                                                                      | Northumberland |
| Nottingham .....                                                                                     | Nottingham.    |
| Oxford .....                                                                                         | Oxford.        |
| Bridgenorth, Shrewsbury ....                                                                         | Salop.         |
| Bridgewater, Ilchester, Taun-<br>ton, Wells .....                                                    | Somerset.      |
| Portsmouth, Southampton, Win-<br>chester .....                                                       | Southampton.   |
| Newcastle, Stafford .....                                                                            | Stafford.      |
| Dunwich, Ipswich .....                                                                               | Suffolk.       |
| Bletchingley, Guildford, Rye-<br>gate, Southwark .....                                               | Surrey.        |



CHAP.  
XIV.*Cities, Boroughs, &c.**County.*

Arundel, Chichester, East-Grin-  
sted, Hastings port, Hors-  
ham, Hytheport, Lewes, Mid-  
hurst, Rye port, Shoreham,  
Winchelsea port, Bramber.. Sussex.

Warwick ..... Warwick.

Appleby ..... Westmorland.

Chippenham, Cricklade, De-  
vizes, Downton, Ludgershall,  
Malmesbury, Marlborough,  
New Sarum, Wilton ..... Wilts.

Worcester ..... Worcester.

York, Hull, Scarborough. York.

In all, ninety-six cities boroughs, and ports,  
independent of the counties.



## CHAPTER XV.

*State of the Representative System in the Reign of Henry the Fifth.*

HENRY THE FIFTH, in virtue of the act of succession made in the seventh year of the reign of his predecessor, succeeded to the throne. The statutes passed in his reign are expressed to be “made by the advice and assent of the lords spiritual and temporal, and at the instance and request of the commons.”

CHAP.  
XV.

The people, confiding in his justice and integrity, contrary to the ancient custom, offered to take the oath of allegiance before he was crowned. The king, however, declined receiving that testimony of their esteem, telling them it was not reasonable they should swear fidelity to him before he himself had taken a solemn oath to govern them with equity, and according to law.

In the first year of his reign he advised with his parliament in what manner he should assist his allies, and restrain the efforts of his enemies; and a secret committee of commons was appointed to confer with the lords on affairs of

Cotton's  
Posthum.  
29.



CHAP.  
XV.

great importance. The next year he advised with the parliament about his claim to France, which he would prosecute if they approved of, and gave him assistance: this they freely promised.

Such extraordinary care was taken by the legislative power in those days to prevent undue elections, and returns of members to parliament, that the two acts of Henry the Fourth were further improved by his immediate successor.

<sup>1 Hen. 5, 1.</sup> The first statute that was passed in the first year of Henry the Fifth enacted, that the laws regarding elections should be strictly observed; and that the knights of the shires should be henceforth chosen out of such knights as are resident within the county on the day of the date of the writ of summons; that the citizens, esquires, and others that are electors, should likewise be resident within the respective shires where such elections were to take place, and that the citizens and burgesses should be chosen out of those who were free of and dwelling in the cities and boroughs which sent representatives. This act was made pursuant to a petition of the commons, and the king never opened any session of parliament without a declaration by his chancellor, that the church and all persons and corporations should enjoy their liberties.

In the reign of Henry the Fifth, royal prerogative and parliamentary privilege were invio-



lably preserved; the king freely granting to the people their constitutional rights, while he declared his own, and was ever ready to receive, on every occasion, the petitions of his parliament. Very few petitions were rejected by him; he never infringed the privileges of parliament, nor did he overburden his subjects with exorbitant and unnecessary taxation, notwithstanding his foreign wars. His demands were no more than necessary for his expenditure, and, therefore, they never refused to grant the assistance he required. As he made no attempts on the liberties and privileges of parliament, the lords and commons enjoyed their united privileges without any interruption; and such was the harmony existing between him and his parliament, that he never levied war, or made peace, without their advice and consent.

CHAP.  
XV.

Cotton ut  
supra.

In the fifth and the two succeeding years of his reign, the Duke of Bedford, the brother and lieutenant of the king, summoned parliaments, where, in the presence of the lords and commons, the regent declared the king's pleasure, that the church and all estates should enjoy their liberties, and that he asked their advice in what manner he should conduct the war in which he was engaged, and to take into their consideration the state of the kingdom and the defence of the frontiers.

Cotton's  
Recor. 553,  
559.

The treaty of peace was laid before the par-



CHAP.  
XV.

liament in the eleventh year of his reign, which was ratified and confirmed by the lords and commons. While the parliament thus enjoyed their rights and privileges, the king exerted his prerogative equal to any of his predecessors, but never to the injury or prejudice of his subjects; and whenever the judges exercised an arbitrary conduct, or exceeded the bounds of judicial authority, he frequently stopped their proceedings, and commanded his justices to stay arraignments until they had authority from him in council.

The following boroughs were omitted in the reign of Henry the Fifth :

|                       |                           |   |                |
|-----------------------|---------------------------|---|----------------|
| Torrington            | —                         | — | Devonshire,    |
| Hertford              | —                         | — | Hertfordshire, |
| Ilchester             | —                         | — | Somersetshire, |
| Newcastle             | —                         | — | Staffordshire, |
| Steypning             | —                         | — | Surrey,        |
| Cricklade             | —                         | — | Wilts;         |
| and Bedwin and Calne, | in Wiltshire, were added. |   |                |



## CHAPTER XVI.

## HENRY SIXTH.

HENRY THE SIXTH, at the age of nine, succeeded his father, on the thirty-first of August, 1422, and held his parliament on the ninth of November following, where it was declared as usual, and continued by statute, that all estates should enjoy their liberties, without the word “concedimus,” or “we grant,” being inserted in the confirmation.

CHAP.  
XVI.

The general preamble to the acts was the same in the time of Henry the Sixth as in the former reign. An alteration only was made in the king's own stile and title by an act of parliament for changing the seals; the inscription was enacted to be “Henricus Rex Franciæ et Angliæ, Dominus Hiberniæ,” Henry having been crowned king of France at Paris, on the seventeenth of December, 1430, and in the ninth year of his reign.

In the several parliaments of the king, the advice of the lords and commons was required in cases of peace and war; and it was enacted, that such petitions as were not taken into con-

Cotton's  
Records,  
584.



CHAP.  
XVI.



sideration at the end of the sittings should be submitted to the council, to be determined according to their discretion. This council consisted of six at least; in cases of importance, of all or most of the members; and where the king himself was to be consulted with, nothing was to be done without the assent of his uncles, the Dukes of Bedford and Gloster.

Cotton's  
Records,  
368.

In the second year of the reign of Henry the Sixth, Sir John Mortimer, of Bishop Hatfield, in the county of Hertford, escaped from the Tower, where he had been committed on suspicion of treason. For this he was indicted with the consent of parliament, and being afterwards apprehended, was carried to the Tower and executed. This was an unparalleled stretch of prerogative, contrary to every principle of natural justice. That a man should be condemned and executed upon a bare indictment, without arraignment or trial, was ever inconsistent with the former purity of English jurisprudence, and formed a monstrous precedent against the rights and liberties of the subject.

4 Hen. 6.

The parliament, in the fourth year of this reign, was summoned to meet at Leicester, and orders were sent to the members that they should not wear swords. This parliament was opened with a confirmation of liberties, and an act was passed relative to the knights of the shire.



By a statute passed at the same time, it appears that the right of elections was tried before the king's justices; for the act declares, that knights of the shire and sheriffs against whom any inquest for undue elections is found before the justices of assize shall have their traverse thereto, and is a confirmation of the one passed in the eleventh year of Henry the Fourth.

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XVI.

4 Hen. 6.

In the eighth year of the reign of Henry the Sixth, William Lake, a servant of William Mildred, representative for London, being committed to the Fleet upon an execution of debt, was liberated by the privilege of the house of commons.

If we consider the statute of the seventh of Henry the Sixth, the oldest on record which directs or regulates the form of county elections, we find it was made "at the grievous complaint of the commons in parliament of the undue election of the knights of counties for the parliament, which were sometimes made of affection of sheriffs, and otherwise against the form of the writs directed to the sheriffs, to the great slander of the counties, and hindrance of the business of the commonalty in the said counties, &c." This statute appears assigned to prevent abuses arising from the partiality of sheriffs, or other undue influence used in elections, and not to make any change in the rights of the electors. The enacting part states, "Our sovereign lord the king, *willing therein to pro-*



CHAP.  
XVI.

“ *vide remedy*, by the assent of the lords spi-  
 “ ritual and temporal, and the commons, in the  
 “ present parliament assembled, hath ordained  
 “ and established, that from henceforth the elec-  
 “ tions of such knights shall be made in the form  
 “ that followeth; that is to say, at the next  
 “ county to be holden after the delivery of the  
 “ writ of parliament, *proclamation shall be made*  
 “ *in the full county of the day and place of the*  
 “ *parliament, and that all they that be there*  
 “ *present, as well suitors duly summoned for the*  
 “ *same cause, as others shall attend to the elec-*  
 “ *tion of the knights for the parliament, and*  
 “ then in the full county they shall proceed to  
 “ the election *freely and indifferently, notwith-*  
 “ *standing any request or commandment to the*  
 “ *contrary.*”

There is no word subsequent in this act which can imply any intention in the legislature to increase or diminish the number of electors of knights of the shires. All the householders were electors from the earliest times, and the substance of the act is but a confirmation of an old right and custom, which appears evident from the preamble of the subsequent act, passed in the eleventh of the same reign—“ Whereas,  
 “ in the parliament holden at Westminster in  
 “ the seventh year of the reign of our lord the  
 “ king, there was ordained and established by  
 “ a statute *for the preservation of the liber-*



*“ties and franchises of the election of the  
“knights of the shires used through the realm  
“a certain form and manner, as in the said sta-  
“tute is more fully contained, &c.”* The  
“preservation of liberties and franchises, and  
“through the realm,” is very different from the  
communication of a liberty or franchise to per-  
sons not before entitled to it. The act of the  
eighth of Henry the Sixth, instead of enlarging,  
limits the number of electors. It enacts, “that  
“these knights shall be chosen, in every county,  
“by people dwelling and resident in the same  
“county, whereof every one of them shall have  
“land or tenement to the value of forty shil-  
“lings by the year at the least, over and above  
“all charges:” which is explained by a subse-  
quent act of the tenth of the same king, to mean  
*freeholds of that value within the county for  
which the election is to be made.*

And the reason this was done is set forth in  
the preamble: “Whereas the elections of  
“knights of shires to come to the parliament of  
“our lord the king, in many counties of the  
“realm of England, have now of late been made  
“by very great, outrageous, and excessive  
“numbers of people dwelling within the same  
“counties of the realm of England, of which  
“most part was of people of small substance  
“and of no value, whereof every of them pre-  
“tended a voice equivalent, as to such elections



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XVI.

“ to be made, with the most worthy knights  
“ and esquires dwelling within the same coun-  
“ ties, whereby manslaughter, riots, batteries,  
“ and divisions among the gentlemen and other  
“ people of the same counties *shall very likely*  
“ *rise and be*, unless convenient and due remedy  
“ be provided in this behalf: our lord the king,  
“ considering the premises, hath provided, or-  
“ dained, and established, by authority of this  
“ present parliament, &c.”

This preamble not only acknowledges that the right of suffrage was not merely claimed, but in full exercise, by the whole of the householders in England; but plainly creates a discrimination, that did not before exist, between the people and “ the most worthy knights and “ esquires,” whom it professes to invest exclusively with that privilege which had been, time immemorial, the natural and constitutional right of the whole nation.

It is also remarkably worthy the reader's attention that this preamble does not state that riots, batteries, and divisions *had* ever happened, or presumes to recite one solitary instance of such outrage having at any time been committed, but merely that they “ shall very likely arise “ and be,” and *that* among the gentlemen, as well “ as others;” and, therefore, through this false plea, and futile supposition, has this first step of infringing on the liberties of election taken



place, by vesting the exclusive privilege of voting in those individuals, to the deprivation of the rights of the householders at large.

CHAP.  
XVI.

The right of election in cities and boroughs was originally exercised by the whole body of the people, within their respective districts, for a great length of time after the elections of their representatives had ceased to be made by the whole county, in county court assembled. At Preston, Taunton, Honiton, and Tregony, the right of voting is *still* universal, and would have remained so in other boroughs but for the charters confining it to corporations; and also from resolutions of the house of commons on the trial of controverted elections, when the house has seldom agreed in its resolution with any former one upon similar occasions. Even since the establishment of committees for the trial of disputed elections, they have determined the right of voting, at Saltash, at one time to be in the corporation, at another in the burgage-holders; and two members have sat in the same parliament on the election of each of those descriptions of constituents.

In the case of the city of Westminster, the house of commons has determined that the right *has not* been, and that it *has been*, in the inhabitants of the duchy court of Lancaster; in the case of Pontefract it was first declared to be in the burgage-holders, afterwards in the



CHAP.  
XVI.

housekeepers; and determinations of similar contrariety have been made respecting most of the boroughs in England.

St. Amand,  
p. 187.

St. Amand, in his "Historical Essay on the Legislative Power of England," has asserted that none but the immediate tenants of the crown, the lesser barons, came to the county court, and none other had votes; till, by the eighth of Henry the Sixth, all freeholders of forty shillings per annum had that right given to them.

The reverse of this appears by the statute he quotes; it gives no right to freeholders of forty shillings per annum, which they did not previously possess as householders, but excludes those of the latter description, thereby disfranchising nine-tenths of the electors in every county of England, and the whole body of householders in each respective county, who, it appears from all the writs and returns which we have quoted, have enjoyed the right of voting up to this period. It seems to have been the intention of the legislature in enacting this law to alter the constitutional usage and custom of the kingdom with respect to elections for the shires, and not to remedy a recent abuse and innovation.

This assertion of St. Amand is at least grounded on misconception. In a charter of Henry the First, relating to the manner of hold-



ing county courts, it is said by that king, “ Et  
 “ volo et præcipio, ut omnes de comitatu eant  
 “ ad comitatus et hundrida, sicut fecerint tem-  
 “ pore Regis Edwardi :”—By this, *all* of the  
 county were required to come to the county  
 court and hundred, as they did in the time of  
 King Edward.—Nor was any alteration in this  
 point made by any subsequent law.

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In the statute of the seventh of Henry the  
 Fourth above recited, “ all that are present in  
 “ the county courts, as well as suitors duly  
 “ summoned for the same cause, as others, are  
 “ commanded to attend to the election of the  
 “ knights for the parliament.” Those suitors  
 to the county court were the *bavasors* or *mesne*  
*tenants*, who did not hold their lands directly  
 of the king; and might, before the passing of  
 the law, not only have concurred in the election  
 of knights of the shires, but might have been  
 themselves elected.

To qualify any person for being chosen, the  
 mere possession of a knight's fee was insuffi-  
 cient; it was necessary he should be “ miles  
 “ gladio cinctus :”—knighted according to the  
 forms at that time in use.—By an act of Richard  
 the Second, all who had lands to the value of  
 twenty pounds yearly in fee, or for term of life,  
 were obliged to receive the honor of knighthood.  
 And this seems to have been founded on a more  
 ancient custom. For there are writs of Henry

Cotton's  
Abridg. p.  
13, of the  
Records in  
the Tower.



CHAP.  
XVI.

Rot. Claus.  
24 H. 3.  
m. 8. dorso.  
& 26 H. 3.  
m. 6.  
23 H. 6.  
c. 15.

the Third, commanding the sheriffs to summon to the county courts all who held one knight's fee, or less than a whole knight's fee, that they might there be made knights. There is also an act of the twenty-third of Henry the Sixth, which says, "the knights of the shires shall be notable knights of the same counties for which they shall be chosen, or otherwise such notable esquires, or gentlemen born of the same counties as shall be able to be knights; and no man to be such knight, which standeth in the degree of a yeoman or under."

In this law the ability of being made a knight by having freeholds sufficient to qualify for the title is admitted, instead of the actual order of knighthood, required by the old writs; but in no statute relating to knights of the shire is there any intimation of its being required they should be *tenants in capite of the king*, or of the usage having been in any respect altered.

If by virtue of the clause in Magna Charta, or by any subsequent usage introduced during the reigns of Henry the Third or Edward the First, such knights were elected by *tenants in capite of the king, exclusively of all others*, and represented *them alone*, no others could be charged with the payment of their wages. In the fifty-first year of the reign of Edward the Third the commons petitioned the king that "the said expenses be levied of *all the com-*

Parl. Rolls.  
51 Edw. 3.  
n. 45.



“ *mons of the counties, as well within franchises* CHAP.  
 “ *as without; except the franchises of cities and* XVI.  
 “ *boroughs, and except those who come to par-*  
 “ *liament by writs of summons, and their tenants*  
 “ *who hold in bondage.*” The words in the

record run thus; “ *Que plaise au roy notre*  
 “ *Seigneur que soit ordeine a ceste present*  
 “ *parlement, que les dites despenses soient levez*  
 “ *de toutz les communes des dites comtés, si*  
 “ *bien deinz franchises come dehors; forspris*  
 “ *de la franchise des citées et burghs, et forspris*  
 “ *de ceux qui viegnent ici par brief à parle-*  
 “ *ment, par summonce et de leurs tenants qui*  
 “ *tiegne en bondage.*” The commons could  
 not have made the petition so general, if the  
 right of election in those days had been con-  
 fined to *tenants in chief to the king*: it contains  
 strong evidence that the electors of knights of  
 the shires were, anciently, none but the land-  
 holders, whom some modern authors have de-  
 nominated *lesser barons*.

There are no indentures to be met with, but  
 only schedules, comprising and returning the  
 election of knights of the shires, before the  
 statute of the seventh of Henry the Fourth;  
 which states, “ And after they be chosen, the  
 “ names of the persons so chosen (be they pre- 7 Hen. 4,  
 “ sent or absent), shall be written in an indenture c. 15.  
 “ under the seals of all them that did choose  
 “ them, and tacked to the same writ of the



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XVI.

“parliament; which indenture, so sealed and  
“tacked, shall be holden for the sheriff’s return  
“of the said writ, touching the knights of the  
“shires. And in the writs of the parliament  
“to be made hereafter, this clause shall be put;  
“‘Et electionem tuam in pleno comitatu tuo  
“‘factam, distincte et aperte sub sigillo tuo  
“‘et sigillis eorum qui electioni illi interfuerint  
“‘nobis in cancellaria nostra ad diem et locum  
“‘in brevi contentos certifies indilate.’”

8 Hen. 6,  
c. 7.

This was confirmed by the statute of the eighth of Henry the Sixth. “And such as have the  
“greatest number of them that may expend  
“forty shillings by the year and above as afore-  
“said, shall be returned by the sheriff of every  
“county, knights for the parliament, by inden-  
“tures sealed between the said sheriffs and the  
“said choosers so to be made.”

Prynne,  
Brev. Parl.  
p. 250.

Before either of those statutes were made, concerning the returns of knights of shires by indenture, Mr. Prynne has inserted, in his “*Brevia Parliamentaria*,” some indentures and certificates of the elections of several citizens and burgesses returned into the chancery, which he conceives were the origin of those acts. Most citizens and burgesses were returned by the cities and boroughs by particular indentures under their seals, affixed to the writs after the indentures for the return of the knights for each county, especially since the twenty-third of



Henry the Sixth, which confirms former acts  
passed relative to elections. This statute enacts  
“ That every sheriff, after the delivery of any  
“ such writ” (for the election of citizens and  
burgesses to come to parliament) “ to him  
“ made, shall make and deliver, without fraud,  
“ a sufficient precept under his seal to every  
“ mayor and bailiff, or to bailiffs, or bailiff,  
“ where no mayor is, of the cities and boroughs  
“ within his county, reciting the said writ,  
“ commanding them by the said precept, if it be  
“ a city, to choose, by citizens of the same city,  
“ citizens ; and in the same manner and form if  
“ it be a borough, burgesses by the burgesses of  
“ the same, to come to parliament. And that  
“ the same mayor and bailiff, or bailiffs or  
“ bailiff where no mayor is, shall return law-  
“ fully the precept to the same sheriffs by in-  
“ dentures betwixt the same sheriffs and them  
“ to be made, of the same elections, and of the  
“ names of the said citizens and burgesses by  
“ them so chosen ; and thereupon every sheriff  
“ shall make a good and rightful return of every  
“ such writ, and of every return by the mayor  
“ and bailiffs, or bailiffs or bailiff where no  
“ mayor is, to him made. And that every  
“ sheriff, at every time that he doth contrary to  
“ this statute, or any other statutes for the  
“ election of knights, citizens, and burgesses, to  
“ come to the parliament, before this time made,

CHAP.  
XVI.23 Hen. 6,  
c. 14.



CHAP.  
XVI.“ shall incur the pain contained in the said  
“ statute, &c.”1 Hen. 5,  
c. 1.

The preamble to the above statute, made upon the petition of the commons, recites,  
“ That the citizens and burgesses of cities and  
“ boroughs coming to the parliament should be  
“ chosen men, citizens, and burgesses, resident,  
“ abiding, and free, in the same cities and  
“ boroughs, and none other,” as in the statute  
of the first of Henry the Fifth is more fully  
contained, “ which citizens and burgesses have  
“ always in cities and boroughs been chosen by  
“ citizens and burgesses, and no other, and to  
“ the sheriffs of the counties returned, and  
“ when their returns received and accepted by  
“ the parliaments before this holden, &c., until  
“ now of late that divers sheriffs of the counties  
“ of the realm of England for their singular  
“ avail and lucre, have not made due election  
“ of the knights, nor in convenient nor good  
“ men and true returned, and sometimes no  
“ return of the knights, citizens, and burgesses,  
“ lawfully chosen, to come to the parliaments,  
“ but such knights, citizens, or burgesses, have  
“ been returned, which were never duly chosen,  
“ and other citizens and burgesses than those  
“ which by the said mayors and bailiffs were  
“ to the said sheriffs returned, and sometimes  
“ the sheriffs have not returned the writs which  
“ they had to make election of knights to come



“ to the parliament, but the said writs have  
“ imbefiled, and moreover made no precept to  
“ the mayor or bailiff, or to the bailiffs or bailiff  
“ where no mayor is, of cities and boroughs for  
“ the election of citizens and burgesses to come  
“ to parliament by colour of these words con-  
“ tained in the said writs, ‘ Quod in pleno  
“ ‘ comitatu tuo elegi facias pro comitatu tuo  
“ ‘ duos milites, et pro qualibet civitate in comi-  
“ ‘ tatu tuo duos cives, et pro quolibet burgo  
“ ‘ in comitatu tuo, duos burgenses.’ ”

This statute also enacts, that the sheriff shall send out precepts to the mayors and bailiffs of cities and boroughs, to elect citizens and burgesses to serve in parliament, and subjects them to a penalty of one hundred pounds for making an undue return. It also limits the time of election which is to take place in full county between the hours of eight and eleven before noon, and “ every sheriff that maketh  
“ not good and true returns of such election of  
“ knights to come to the parliament in time to  
“ come, as to them pertaineth in manner and  
“ form aforesaid, shall forfeit to the king one  
“ hundred pounds, and also incur the penalty  
“ of one hundred pounds, to be paid to him  
“ that will sue against him,” &c.

The statute of the eighth of Henry the Sixth, on which all the subsequent acts regarding elections have been founded, destroyed that



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indispensable right which had ever belonged to the people. It disfranchised at once, on false pretexts, by far the greatest part of the English nation, by robbing them of their birthright, the privilege of voting for representatives in the great national council, without which they cannot properly be esteemed freemen, because the laws, their birthright, may be changed, suspended, or entirely withdrawn without their consent. For, in ancient times they enjoyed not only the privilege of voting in full county court, or parliament, of each county, for knights of the shires, but also for the citizens and burgesses elected in their respective counties, whereby the equality of representation was preserved. This may again be happily restored, by some equitable mode of transferring the representation of depopulated, or notoriously venal boroughs, to the decision of their respective county courts. Which method of equalizing representation deserves the preference, because it is not liable to the odious charge of innovation; on the contrary, it is authenticated by long usage and legal precedents of ancient times.

Although our ancestors endeavoured to preserve their liberties, and to secure them against future incroachments, by all the power of human policy, still our history affords too many proofs of the infringements of those pri-



vileges to which they had been long entitled. The power of sovereign authority and aristocratical influence, established by the nature of the feudal system was such, that no means, short of an entire renovation of our primitive government, could, or can, secure the people in the possession of their rights. This is proved by the acts which have since passed to the great detriment and restriction of popular freedom. Had not the deeds of oppression been sown in the state, and never entirely eradicated, corruption could not have been able to have caused statutes to be enacted, which have rendered by degrees the representation of this country the shadow of that legislature, the nation did once and ought for ever to enjoy. The influence which first deprived the people of their constitutional right of legislating for themselves, and substituting the limited privilege of voting for deputies may be ascribed to the above arbitrary principles. To the same cause may be attributed the power which next confined this right of voting to certain favoured boroughs by charter; and by which monopoly of privilege, the other cities and towns were precluded from exercising the same right to which they were undoubtedly, by their constitution, equally entitled. The system of influence being thus increased in proportion to the limitation of the powers and privileges of



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the people, the right of landholders to vote for knights of the shire, who were before chosen by the *commonalty* of the county, was confined to those only who possessed estates of forty shillings per annum value. And, as oppression is not to be satiated with incroachments, but increases in appetite in proportion to what it destroys of privilege, two years after another act, by limiting this franchise to freeholders of forty shillings annual income, deprived every other landholder of their right. By this insatiate thirst of power and influence of corruption, parliaments held in the days of Alfred twice in a year, and more frequently if necessary, were made triennial, and afterwards septennial. Thus as popular right was diminished, sovereign power was extended. While many statutes were made for personal security, the national rights of a free and entire legislation were almost rendered a political negative. Whatever could be affirmed, as having been in this particular a constitutional inheritance, is, by the above acts, denied to have any plea to an existence.

These statutes, which affect to dispense popular rights, are not only infringements of national liberty, but are contrary to the letter of those charters granted even in the height of feudal tyranny. By *Magna Charta*, its frequent confirmation, and particularly the sta-



*tutum de tallagio*, the subject had the privilege of exercising those rights and customs which had ever been enjoyed. By these, every freeman was certainly empowered to resume that share in the legislature his ancestors had possessed. And, to secure to him this privilege inviolate, religion was employed solemnly to invoke Divine vengeance against those who, by any act or advice, endeavoured to alter or subvert the intention of those respective charters.

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The statutes, therefore, that bestow the rights to freeholders and chartered burgesses, are expressly against the essence of those statutes which, as has been mentioned, gave every freeman all the rights that were ever possessed. For we have shewn, that in the first establishment of Saxon liberty, every freeman had a share in the legislature. And if every freeman had once a share in this most efficient principle of the constitution, the *statutum de tallagio*, and that which confirmed *Magna Charta*, were meant to restore this essential right of an associated individual to the people. The partial restriction of bestowing this privilege on some, and precluding others, are evident infringements of former laws as well as original rights. And before the same tribunal of *Magna Charta*, the charters of confirmation, &c. are liable to be condemned, as well as the statutes that have



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XVI.

extended the duration of parliaments beyond their ancient constitutional existence.

Though the facts of the abuse and grievance of the actual representation of the commons in parliament are indisputable, the grievance is undervalued, and the abuse is defended. The representation, to be real, should be freely chosen, independent of the nobility and of the crown, and amenable at short intervals to the judgment of their constituents. In every society, in which industry is meant to be encouraged, and the acquisition of property permitted, that property is as well entitled to the protection of the laws, and should be equally guarded by the institutions of the government, as the liberty or life of the proprietor. These objects may not be of equal importance, but they are equally entitled to protection. For all the practical uses of representation, the poorest man in the kingdom should find himself as effectually represented, as if he voted in it himself. The true interests of the poor are intimately connected with the true interests of the wealthy, and inseparable from those of the ranks immediately above poverty. The acquisition of a vote would be a spur to industry, and a reward of conduct, nor could any man be excluded, for whom a place is reserved, which he might occupy at any time on easy terms.



Though property will always have a considerable operation, it is not intended to insinuate, that it necessarily produces corruption. But it may, however, obtain a degree of weight beyond what is natural to it. It may be enabled to excite fear as well as to procure respect, and without purchasing a majority, or controlling its dependents, it may acquire such power as to overcome and bear down all opposition.

By the system which prevails at this day of conducting elections, and which has its origin from the disenfranchising statute of Henry the Sixth, precisely this species of power is thrown into the hands of the wealthy. It confines the choice of electors for counties within the ranks of opulence; for it throws obstacles almost insurmountable in the way of every man who is not rich, and thereby secures to a select few the capability of becoming candidates. Boroughs are for the most part the private property of the patrons, or have the right of voting vested in a small corporate body, the majority of which are his dependents. There is in many counties, cities, and boroughs, a degree of influence which accustoms the electors on all vacancies to look out for the recommendation of a candidate by the patron, and induces them, either from fear, from private interest, or from incapacity to oppose, because he is so recommended, to adopt him.



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These different kinds of monopoly have not been obtained without many and vigorous struggles ; resistance, however, has only tended to give them strength. Contests have been found to be attended with such extravagance, party heat, tumult, expense, and litigation, and the effects of these have spread so wide, and endured so long, that on vacancies occurring, more consideration is bestowed to contrive the means of preserving *the peace of the county*, than to secure its freedom and independence.

Henry the Sixth being a weak prince, his queen, Margaret of Anjou, took advantage of his indolence, and with the assistance of Henry Beaufort, cardinal of Winchester, and the Duke of Buckingham, caused the Duke of Gloster to be removed from the council. The steady and intrepid conduct of Gloster had made him very popular ; but the queen and ministry having assembled a parliament to suit their purpose at St. Edmund's Bury, the duke was seized, and privately murdered. The death of this patriotic nobleman was soon followed by that of the cardinal, who lamented, that he, who could purchase parliaments and boundless power, could not, with all his wealth, procure even a short extension of his own existence.

25 Hen. 6.

The wise and moderate administration of the Duke of Gloster, who was the chief support of the house of Lancaster, had been sensibly felt



by the nation—after his death, the interest of the house of York daily gained ground. The queen exercised her authority as protector with such arbitrary principles as to disgust both the nobility and people. CHAP.  
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The power of the Duke of York increasing, the king granted to him letters patent, to preside in the parliament of the thirty-first of his reign, and the lords appointed him protector and defender of the realm during the pleasure of the king. 31 Hen. 6.

No reconciliation could be effected between these two rivals for power, the Duke of York and Somerset—the former stirred up the commons against the latter, and also addressed himself to the nobility, who disliked the authority he assumed over the king and queen. He was accused in parliament of treason, and sent to the Tower; but the king, although in a state which rendered him almost incapable of travelling, was brought from Clarendon to London, to dissolve the parliament and release the duke. It was suspected he had dishonorably, if not treacherously, delivered up the strong towns in Normandy, when he commanded the English army; but instead of receiving a punishment adequate to the enormity of his offence, he was made captain-general of the king's armies in France, and intrusted with the



CHAP. remainder of the English interest in that coun-  
 XVI. try to the ruin of the commonwealth.

Those proceedings disgusting the York party, the duke levied a powerful army, and marched towards London. At the battle of St. Alban's the king's party was routed, and the Duke of Somerset slain. The king was conveyed to London, and a parliament summoned to meet  
 33 Hen. 6. at Westminster, on the 9th July, 1455, when the Duke of York, the Earls of Warwick and Salisbury, were declared loyal subjects, and were included in the general pardon passed in this parliament.

Cotton's  
 Recor. 657  
 —658.

33 Hen. 6. On the twenty-first of November, the king by letters patent appointed the Duke of York to preside in the parliament, which commission was read before the lords, and then before the commons. After which the king made the duke protector and defender of the realm, and the letters patent were confirmed by common consent of parliament.

The queen and her adherents met soon after at Greenwich, to consult on measures to restore the king to his former liberty and government, and it was determined that the protector should be commanded to give up his office, as the king was of years and discretion sufficient to rule without a guardian; therefore, on the nineteenth of November, in the thirty-fourth



year of his reign, the king being present in parliament, as well as by letters patent in the nature of a writ, directed to the duke as by full consent of parliament, repealed the power he had delegated to him.

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Both parties had again recourse to arms: the Duke of York being unsuccessful fled to Ireland. And a parliament being summoned to meet at Coventry, the duke and his confederates were attainted of treason, and their estates forfeited.

In this parliament it was enacted that all letters patent, and grants of any office to any person in opposition to the king, in the battles of St. Albans, Blackheath or Ludlow, shall be void, and that all grants made by the Duke of York, or by the Earls of Salisbury or Warwick to any person being in those fields against the king be also void, and that the grants made by the king in favor of any one who favoured his cause, should stand good.

88 Hen. 6.  
Cott. Recor.  
664.

It was also enacted that the election of such knights of the shires as had been returned to the parliament by virtue of the king's writ, without any other election, should stand good, and that no sheriff for returning them should incur the penalty inflicted by the act of the twenty-third of Henry the Sixth. In regard to the upper house, the lords of the house of York,



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their friends and confederates, few of them had any writs of summons to this parliament.

The army under the command of the Earls of Warwick and March having defeated that of the king near Northampton, the queen with the Duke of Somerset and the young prince fled into Durham, leaving Henry behind, who was taken prisoner, and conveyed to London. The Duke of York, having advice of this victory left Ireland whither he had gone after his last defeat. On his arrival he summoned a parliament in the king's name, to meet at Westminster on the seventh of October, when all the acts made in the thirty-eighth year of Henry the Sixth were repealed, and all the acts, statutes, and ordinances made at the parliament held at Coventry were reversed, because that parliament was unlawfully summoned and holden, and the knights and burgesses not duly chosen. These acts are not among the printed acts, but are in the parliament rolls to the purport beforementioned: few of the expired or repealed acts are at large in the volumes of statutes, although the titles of most of them are; but the whole parliament of Coventry, and all the transactions there being reversed and repealed, even the titles of the acts of that parliament are left out.

Gurdon's  
Parl. Hist.  
328.

On the ninth day of the parliament a writing was exhibited to the lords, touching the claim of the Duke of York to the crown, which on



consultation was agreed to be read, but not to be answered but in the presence of the king.

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XVI.

Considerable debates having arisen on this subject, it was at last resolved that the king should enjoy the title during life, and that on his death or resignation, the Duke of York, as heir apparent, should succeed him. An act was therefore passed in this parliament, which was the last of Henry the Sixth, recognising and confirming the title of the duke, and power was given to him to proceed throughout the kingdom, in order to suppress all rebellions and insurrections, and all sheriffs, officers, and subjects, were commanded to obey him as king.

After the battle of Northampton, the queen, and a few of her adherents, retreated into the north. The Duke of York in the plenitude of his power, having issued his commands to the queen, and the nobles who were with her, to repair to London; she not only refused compliance, but levied a strong army of English and Scots, and marched into England to dictate her own terms. The duke's army met them at Wakefield, where they were defeated, and the duke slain; and although the Earl of March was victorious over Jasper of Hatfield, half-brother to Henry the Sixth, nearly annihilating his army, the queen continued her march towards London.

The Duke of Norfolk and Earl of Warwick,



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having the king with them, assembling their forces, marched to meet the queen, and to prevent her advancing to London. They fought near St. Albans, when the queen being victorious, and the nobles who guarded the king saving themselves by flight, he, by that action, being freed from his keepers, betook himself to the camp of his friends.

Those who had the interest of their country at heart, more than the partial interests of the red or white rose, considered only how to prevent the continuance of the queen's plundering army—and the citizens of London, apprehensive the city would suffer as much as the open country had done, refused to admit her. On this the Earl of Warwick, joining the forces of the Earl of March, advanced to London, where they were joyfully received.

The Earl of Warwick assembled his forces in St. John's fields, two days after his entrance into the metropolis, and read to them the agreement made in the last parliament. Demanding whether they would have King Henry to reign any longer—with one voice they exclaimed, No! and on being asked whether the Earl of March, eldest son of the Duke of York, should be their king, they assented with universal acclamation.

Certain officers of Warwick's army, accompanied by some leading men of the common

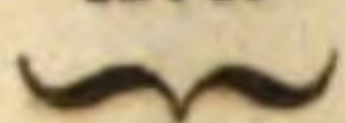


council of London, proceeded to Baynard's Castle, to the earl, to acquaint him with what had passed in St. John's fields. By the advice of Warwick, and some of the bishops, he accepted of the offer of the crown, and proceeding to Westminster, where he was placed in the royal seat in the great hall, with the sceptre of St. Edward in his hand, it was aloud demanded whether he should be king, to which the great concourse of people gave a general assent. On the fourth of March, 1460, he was proclaimed king, by the name and style of Edward the Fourth. And in a council, composed of the lords spiritual and temporal, and some of the principal commoners, it was adjudged and declared, that Henry the Sixth having violated his oath, and broken the agreement made by the authority of the last parliament, had rendered himself unworthy of the crown, and was accordingly deprived of all regal honor, title, and power. Henry lived twelve years after his deposition.

The following alterations were made in the representation of the people during the reign of Henry the Sixth:

Gatton in Surrey, a Saxon borough, which had not been summoned to send members in any preceding reign was restored the twenty-ninth of Henry the Sixth, but according to Prynne had but one election.



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Haytesbury,  
Hindon,  
Westbury,  
Wootton Bassett,

} Wiltshire,

were first summoned by Henry the Sixth to send members ; but none of the cities or boroughs which were represented in the last reign, were omitted in this—And he restored,

Plymouth . . . . . Devonshire.

Newcastle . . . . . Staffordshire.

Farnham . . . . . Surrey.

Bramber with Steyning . . Sussex.

Downton,

Chippenham,

Cricklade,

} Wiltshire.

The town of Hertford and the borough of Ilchester continued to be omitted.



## CHAPTER XVII.

THE first parliament of Edward the Fourth was held at Westminster on the 4th of November, 1460, and a long declaration was made of his right to the crown of England. The three preceding monarchs were declared usurpers, and their heirs were disabled by an act from enjoying any inheritance, estate, or profits in the realm. The queen of Henry the Sixth with the prince and many of her adherents were attainted in this parliament.

CHAP.  
XVII.Cott. Recor.  
670.

1. Edw. 4, 1.

The style used in acts of parliament received some alteration in this reign; formerly they were passed by the consent and advice of the lords, and at the special request of the commons, but now was added “by the *authority* of the same parliament, ‘the king hath ordained and established, &c.’” and this form continued until the reign of Henry the Eighth.

Edward the Fourth heard and determined cases in his privy council that properly belonged to the justices of nisi prius and the other courts of law to decide. He determined the cause of the master and brethren of St. Leonard’s, in York, who had complained against Sir Hugh Hastings and



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others for depriving them of a great part of their living which consisted of a thrave\* of corn from every plough land in the counties of York and Cumberland; notwithstanding the act of parliament of Henry the Sixth directs that they shall have action of debt and detinue at their pleasure.

In this reign Grantham in Lincolnshire, and Ludlow in Shropshire were summoned. Plymouth, Gatton, and Westbury were omitted, and Ilchester was returned, Wenlock in Salop, was empowered by *charter* to send one member to parliament 29th November, 1478. This is the first instance of a borough receiving the privilege to send a delegate to parliament by charter.

The short reign of Edward the Fifth afforded no time for the encouragement of boroughs, nor did any alteration take place in that of Richard the Third.

A number of lords, knights, and freeholders, in a declaratory address to the Duke of Gloster, guardian to Edward the Fifth, bastardize the children of Edward the Fourth, and setting aside the issue of George, Duke of Clarence, by virtue of his attainder in the seventeenth of the latter king, declare Richard heir to the Duke of York, father of Edward the Fourth, and desire him to

\* Twenty four sheaves, or four shocks of four sheaves in each,



accept of the crown of England. The principal number of Richard's adherents having subscribed to this address, it was laid before parliament, and he was declared and elected king by the lords spiritual and temporal and commons assembled in parliament.

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Although Richard the Third hesitated at no enormity to procure his accession to the throne, still he may in some degree deserve the character of a good king. For he agreed with his parliaments, and never refused giving his sanction to any beneficial acts. In the session during his short reign, the acts were passed in the same style as in the time of Edward the Fourth.

The house of York did not hold the sceptre more than twenty-four years. We have no historians who wrote in that interval. Those who wrote, after the crown came to the house of Lancaster in the person of Henry the Seventh, have thrown a dark shade on their actions. Subsequent historians have followed the example, and raised the character of that of Lancaster without doing justice to its rival.

After the fall of Richard, the Earl of Richmond assumed the crown on the 22d of August, 1485, by the title of Henry the Seventh. On the seventh day of November he held a parliament at Westminster, in which it was established, that the inheritance of the crown should remain and abide in him, without any mention what-

Lord Bacon,  
Hen. 7.



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ever of the daughter of Edward the Fourth. But the party who favored his cause having made the union with that princess a preliminary article in their agreement, the two contending houses were united by his marriage with Elizabeth. The king, however, allowed her no share in the government, although she was unquestionably the rightful heir to the crown, and even neglected to give her the usual ceremonies.

The act which rendered legitimate the children of John of Gaunt by Catharine Swinford, made them capable of holding honors and dignities, the royal dignity excepted. From the charter itself Henry the Seventh could not claim the crown as a descendant of that branch of the house of Lancaster legitimated by Richard the Second. The very act of parliament which legitimated and qualified them for all other dignities, except in the most particular manner the crown.

Although Henry wisely declined claiming the crown by right of conquest, still that idea preponderated in his mind. However, he chose to have his title recognized by an act of parliament, which, from his influence among the members was drawn up according to his wishes. The terms of it were ambiguous, and declaratory of a preceding right; without any appearance of creating a new title, he did not suffer Elizabeth, the heiress of the house of York, to be so



much as named in the act. Not to give offence, however, to the friends of that family, he caused the entail of the crown to extend no farther than to the heirs of his body, and not mentioning his right heirs. Thus making the entail rather as a personal favor to him and his children than a total disinheritance of the house of York.

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During the debate about the act of entail, it was suggested that several members were under attainders; it was therefore ordered that they should forbear coming to the house till their attainders were reversed by act of parliament. As the judges gave this as their opinion in the Exchequer chamber, it was also moved in their consultation what should be done for the king himself, who laid under the same imputation. They unanimously agreed that the crown takes away all defects whatever, and that from his accession to the throne the attainder was discharged. But, however, it was enacted by parliament, that all records in which was any mention of the king's attainder, should be taken from off the file, and cancelled.

The king's honor and the safety of his friends being thus secured, the adherents to Richard the Third, who were of rank, were, by the parliament, attainted of treason. The case of those of inferior degree was taken into consideration. They were to be pardoned, and the king, taking the grace awarded to them solely



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to himself, would not have a parliamentary pardon, but published, during the session, his royal proclamation, offering pardon and restitution to those who had taken up arms against him, provided they submitted to his mercy, and took the oath of allegiance and fidelity, by the day appointed.

So much noble blood having been shed in the field, and on the scaffold, Henry thought it requisite to provide a remedy against such misfortunes in future. In the eleventh year of his reign, an act was passed, that no person who attended the king, for the time being, in his wars or otherwise, shall be attainted or convicted of treason by any act of parliament, or by any process of law, whereby they may lose life or forfeit estate. An act of justice, for if every subject, by the duty of his allegiance, is bound to serve and assist his sovereign, it is not reasonable, that by so doing, he should incur a punishment.

The style of the acts of parliament in this reign is “by the assent of the lords spiritual and  
“temporal, and commons, in parliament assembled, and by authority of the said parliament,  
“the king hath done to be made the statutes  
“following.” In the seventh of his reign, he asked the advice of his parliament, relative to the war he meditated against France.

Lord Bacon,  
Hen. 7, p.  
95.

Henry the Seventh was a plodding, and a



suspicious prince. Reflecting on the turbulent conduct of the nobility in former reigns, he thought of lessening the power of the lord, and increasing that of the commons. He truly judged that power accompanied property: in order, therefore, to diminish the power of the nobility, he set very low fines, licensing the alienation of lands held *in capite*. By this the privileges of the nobility were lessened, while those of the commons augmented, whose power became greater as their property increased.

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Whilst the king, the church, and the barons, possessed more than two-thirds of the lands of England in demesne, and under tenure rents and services, the power was vested exclusively in the king and lords. But when Henry the Seventh, made alienation no longer difficult, when his successor made it lawful, to alienate lands in socage by will or deed, and two parts in three of lands, held by knight-service, and also when, at the suppression of the monasteries, great part of the church lands fell into the possession of the commons, the balance of power, which in the early part of this reign, was to a great degree in the king, and lords, spiritual and temporal, preponderated with the representation of the people.

Lord Bacon,  
Hen. 7, p.  
100.

32 H. 8, 1.

34 H. 8, 5.

From this epoch may be dated the power which the commons house of parliament assumed of punishing its own members for absence from



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parliament, as an offence against the house. Formerly the punishment was inflicted in the king's bench, as an offence against the sovereign, and was an act of disobedience to the king's command, in his writ of summons.

Before we mention the mode of punishing the commons for absence from their parliamentary duties, it may be necessary to shew in what manner the barons were treated for similar offences, prior to the passing the statute of Richard the Second. Magna Charta is not a charter of new law, but is declaratory of the old laws and customs of the kingdom. And it shews what has been, and ought to be the rule in amercements; "that earls and barons, shall not be amerced but by their peers." Before any act was made for the punishment of members of parliament, for neglect of obedience to the king's writ, which positively commanded their attendance, informations were exhibited in the king's bench, and the offending party was fined.—Where peers of parliament were amerced upon non-suits, or other judgments ending in *misericordia*, there anciently was a special course of proceeding, both as to the amount of the fine, and the manner of ascertaining it, which differed from the mode of proceeding against commons. The amount of a fine incurred by an earl, or spiritual or temporal baron, was the same; and the assessment was by the

Selden's  
Baron in  
Parl. 170.



king's justices before whom the action depended. CHAP.  
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 The justices, in that case, supplied the place of  
 peers. But although they could pronounce  
 judgment, yet in the amount of the amercement  
 they were limited by the privilege and custom  
 of peerage, which was five pounds for every  
 offence.

The privilege of members of parliament in  
 freedom from arrests, is of Saxon origin. By  
 the laws of Canute, and Edward the Confessor, Leges Can.  
79.  
 persons going to, and returning from the wit- Leg. Edw.  
32.  
 tena-gemote, shall have the king's protection,  
 and be free from arrests.

This ancient privilege has been confirmed by 8 Hen. 6, 1.  
 several acts of parliament, and is pleaded and  
 allowed in informations in the king's name, ex-  
 cept in treason, felony, and breach of the peace.  
 The master of the temple, in the eighteenth of Coke's  
Inst. 4, 24.  
 Edward the First, petitioned to have leave to  
 distrain the Bishop of St David, his tenant, for Gurdon,  
Parl. 283.  
 rent in arrear, to which the king answered,  
 "That it was not lawful, for being a member of  
 "parliament he must enjoy his privilege."

The privilege of the barons in parliament,  
 was always very great. In the reign of Edward  
 the Third, an information was exhibited in the  
 king's bench against the Bishop of Winchester,  
 for absenting himself from parliament without  
 having obtained the king's permission. As the Mag. Char.  
c. 14.  
 barons were not to be judged for any matter



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4 Inst. 15.

Parl. Elsing,  
188.

arising in parliament but by their peers, the bishop pleaded to the jurisdiction of the court of king's bench, and alledged that if he had offended the king by absenting himself from parliament, and not appearing in obedience to the king's writ, he was to answer the king in parliament, "secundum legem et consuetudinem parliamenti," and not in an inferior court. The judges did not directly allow the full extent of his plea, yet they put off the case from day to day, and came to no determination. We have another instance of the privilege of the barons in parliament in the person of William de Wickham, likewise Bishop of Winchester. Falling under the suspicion of Edward the Third, for various sums of money he had received belonging to the king, for which he had not accounted, he was ordered not to come nearer the court than twenty miles. A parliament was held, in which the bishops and clergy were to grant a supply to the king. They complained to the Archbishop of Canterbury, of the Bishop of Winchester not being summoned to that parliament, who sent to him to come and take his place, which he did by virtue of his privilege of peerage, although he had no writ of summons from the king.

5 Rich. 2.

The first act for punishing both lords and commons for absence from parliament, by way of amercement, was in the reign of Richard the



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Second. It enacts “ that if any person of the  
 “ realm have summons to parliament, be he  
 “ archbishop, bishop, abbot, prior, duke, earl,  
 “ baron, banneret, knight of the shire, citizen  
 “ of city, burgess of borough, or other person  
 “ or commonalty, do absent himself, and come  
 “ not at the said summons, except he may  
 “ reasonably and honestly excuse him to our  
 “ lord the king, he shall be amerced or otherwise  
 “ punished, according as of old times hath been  
 “ used to be done within the said realm in the  
 “ said case.” From the last words of this sta-  
 tute, it is evident that the peers were amerced  
 for absence from parliament previous to its  
 enactment. It is a maxim in law that the king  
 may sue and prosecute in what court he pleases.  
 If, pursuant to the statute of Richard the Second,  
 the king prosecute a peer in the high court of  
 parliament for his absence without the king’s  
 license, he shall be there amerced; and if he  
 prosecute in any of the courts of law, the justices  
 adjudged the baron to be fined, but the fine was  
 not assessed but by the peers. This has been  
 already mentioned as five pounds.

In the thirty-first of Henry the Sixth, a cer-  
 tain fine was levied on every lord for not coming  
 to parliament according to their respective de-  
 grees. The fining a lord of parliament according  
 to his degree, in the parliament of Henry the  
 Sixth, has relation to the superior title of duke

Rot. Parl.  
31 H. 6.  
No. 45.  
Stat. 31 H.  
6. c. 2.



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created by Edward the Third. The fine on the possessor of this title was double that of an earl.

Before the statute of Richard the Second, members of the house of commons were prosecuted and punished for absence from parliament, as appears by the words of the act—"that they shall be amerced or otherwise punished according as of old times hath been used to be done." The ancient usage referred to in this act, was by information in the courts of law, and by fine, which was assessed by a jury of commoners.

Parl. cl.  
120.

4 H. 8, 8.

The commons never took upon themselves to punish their own members for absence until the reign of Henry the Seventh, when their power, then in infancy, began to increase, prior to that time, such members, who had occasion to be absent, petitioned the king for leave; but since that period the house of commons have taken upon themselves the punishment of their own members. An act was passed in the sixth of Henry the Eighth which states that no member of the house of commons should depart from the house before the end of the session without licence first obtained of the speaker and commons, and the permission entered of record with the clerk of parliament.

Petitions were not presented to the house of commons until the middle of Henry the Seventh's reign. And although the petition was, in the title, to the commons, yet the prayers in the peti-



tions were addressed to the king, and not to the commons. CHAP.  
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Henry the Seventh during the whole of his reign, took the advice of parliament in all great affairs, whether civil or military; and he judged it prudent at all times to assist martial law, with its sanction and authority. Lord Bacon's Hist.  
H. 8, 214.

Formerly it was imagined a fundamental error in our representative system that the citizens and burgesses so much outnumber the knights of the shire, who represent the landed interest. This increased so much in the reigns of Henry the Seventh, and his immediate successor, as to enable the commons to overbalance, in this species of property, both king, church, and lords.

The greatest part of the citizens and burgesses before this reign were held in sufficient estimation, if they were sagacious enough to move anything in the house which might tend to the advancement of the trade of the city or borough they represented. It was not supposed to be any part of their parliamentary duty to search into the mysteries of government, for even so late as Henry the Seventh, that was looked upon as the province of the king and the lords.

As the whole of the writs, returns, and indentures, except an imperfect bundle of Henry the Eighth, have been lost—it is impossible to ascertain those boroughs, which were either summoned, omitted, or restored, from the seven- Brady in  
Boroughs,  
77.



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teenth of Edward the Fourth, to the end of this reign.

None of the reigns, antecedent to Henry the Eighth, is so replete with such a diversity of parliamentary proceedings, as that of this king. Henry stretched his prerogative to a great extent, and obtained from his parliament whatever he chose to demand. The style in the preamble, to the statutes passed in this reign, was the same in the preceding. The king would not submit to any controul or refusal from his parliaments, though a great many acts were passed beneficial to the nation.

Henry having in 1522, proclaimed war against France without just cause, or even plausible pretext, durst not call a parliament in order to demand a subsidy. Cardinal Wolsey, however, sent orders to all the sheriffs, to return a list of the names of every person above the age of sixteen, with an accurate account of what each was worth in land, stock, moveables, and money. This was followed by a general loan of a tenth from the laity, and a fourth from the clergy. This excited universal tumult. The kingdom at large exclaimed against the conduct of the cardinal, but he regarded not the clamours of the people, being satisfied that the king would support him. This extraordinary method of raising money, was so extremely disagreeable to the people, that the king having



occasion for another supply the following year, thought it more prudent to proceed in the usual way. A parliament was summoned to be held on the fifteenth of April, 1523, at London for that purpose. A convocation meeting at the same time, according to custom, the cardinal, exercising his legatine power, by threats and promises, obtained of the clergy a subsidy of one-half of their revenues payable in five years. The cardinal having effected his purpose with the clergy, went to the house of commons, and endeavoured to shew the necessity of the war the king had undertaken against France. He concluded with a demand of a subsidy of a fifth part of the goods of every lay subject to be paid in four years. This demand occasioned warm debates in the house; half the sum required was only granted. The cardinal, accustomed to carry all before him, was greatly chagrined at the conduct of the commons, and desired to know what they had to allege against the subsidy demanded, that he might convince them of the necessity of the whole. The commons irritated at this interference with their privileges, replied by their speaker, "That it was the order of that house to hear, and not to debate but among themselves." This spirited answer mortified the cardinal; he was convinced that his authority in that house, was

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not of such weight as in the house of convocation.

Although Wolsey had met with so great a repulse in 1522, yet the king, three years afterwards, standing in need of money to carry on his war with France, left the means of procuring it to the option of the cardinal. Too haughty to hazard a refusal from the commons, he resolved on a more arbitrary and speedy method of raising the money. He issued orders in the king's name, to levy throughout the realm the sixth part of the goods of the laity, and the fourth of the clergy. These orders were no sooner published, than the nation exhibited strong symptoms of discontent. They were declared to be a manifest breach of the principles of Magna Charta, and were protested against by all ranks of the people. The king being informed of the dissatisfaction so generally expressed, issued a proclamation, disowning the commissions which had been published in his name. He promised not to exact any thing from his people by force, nor ask any thing but by way of benevolence, as had been the practice in the reign of Edward the Fourth. Demanding shortly after a benevolence in quantity little less than that which was authoritatively required, the citizens of London, being first taxed, excused themselves, by reason that benevo-



lences had been abolished by an act passed in the reign of Richard the Third. CHAP.  
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The cardinal exerted all his influence, used threats and promised to raise the money the king required. He was resolved to serve his master at any rate rather than to apply to parliament. But even under so despotic a prince as Henry the Eighth, assisted by an insolent and haughty minister, the people would not tamely submit to impositions as tyrannic in their nature as ruinous in their execution, nor could they at any time raise subsidies without the concurrence of the parliament. An insurrection marked the determination of the people, to resist all encroachments on their liberties. Although it was quickly suppressed, the king perceiving how the nation stood affected, denied he had in any manner sanctioned the violent proceedings of his minister. A few of the principal concerned in the insurrection were imprisoned, but being shortly liberated, received no farther punishment.

Henry the Eighth encouraged learning, and was, in many instances, bountiful and munificent. In order to found two colleges, which the cardinal projected at Oxford and Ipswich, he applied, with the approbation of the king, to the pope, for his bull, in 1524, to dissolve certain monasteries of small value, the revenues of which were to endow those seminaries. Hav-



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ing effected this, the king and cardinal obtained another bull from the pope, to suppress more monasteries, and erect additional bishoprics, converting various abbeys into cathedrals. The compliance of the supreme pontiff, gave the king a pretext to dissolve all the religious houses, and he caused the monasteries to be visited and inspected, when such vice and immorality were found, as to subject them to censure and punishment. The road being thus opened, Henry ordered the report of the visitors to be read in parliament, which represented the manners of the monks in so odious a light, that the king's ministers took the opportunity of moving, that a bill be brought in to dissolve such monasteries as had not above two hundred pounds per annum in land. This bill remained so long in the house of commons, that the king became impatient to have it passed, which his ministers were not able to effect. Henry therefore, took upon himself the expediting the bill, and sent for the members of the house of commons, to attend him in his gallery, where, after having waited a considerable time, he told them with a fierceness peculiar to himself, that if the bill did not pass, it would cost many of them their heads. The ministers, in the mean time exerted all their influence, and insinuating the advantages which might be derived by grants, or easy purchases of the king, of the lands of



the dissolved monasteries, the king's bill, as it was called, at length passed through the house of commons. It was meant to answer instead of subsidies, for it gave all the lands of the small monasteries to the king, together with the jewels, plate, and other rich and valuable articles. A few of the monasteries having been resigned into the hands of the king, before the general act of dissolution took place, a court of augmentations was erected, by act of parliament, in the twenty-seventh year of his reign. CHAP.  
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27 Hen. 8,
28.

The commons, by complying with the king in passing such acts as were moved for by his ministers, obtained greater privileges than they had ever possessed. Before this reign, it was several times determined by the judges, and received as law, that the person of a member of the commons house of parliament and his servants were exempted from arrests and outlawry, but might be impleaded, sued, and attached by lands and goods. In this king's reign they began, however, to be judges of their own privileges, condemning and imprisoning their fellow-subjects at pleasure.

Parliaments continued longer sitting than at any former period, and were prorogued from time to time; Henry well knowing that long parliaments, which had partaken of his bounty, were the most proper for the great changes he had in view. For instance, the parliament sum-

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moned to meet on the third of November, in the twenty-first year of his reign, was continued by several adjournments and prorogations till a new one was called the eighth day of June, in his twenty-eighth year, and which was also continued by adjournments until another was summoned to meet on the twenty-eighth of April, in the thirty-first year of his reign. In like manner he continued parliaments for a longer period than had been usual, to the end of his reign, and saved the trouble and charge of modelling new ones every year. The king procured to be passed whatever acts he pleased, and in return he allowed the parliament to extend their privileges beyond any former length.

In the thirty-fourth of this reign, George Ferrers, Esquire, burgess for Plymouth, was arrested for debt, and committed to prison under the order of the judges of the King's-bench. The house, on receiving information of the fact, sent their serjeant to demand their member. In the execution of his orders he met with resistance, his mace was broken, and his assistant knocked down. The house of commons so highly resented the treatment the serjeant had experienced, that they would sit no longer without their member, and desired a conference with the upper house on the subject. Sir Thomas Audley, lord keeper, and the lords, judged the contempt to be great, the privileges of the house

being insulted, and referred the punishment to the commons themselves. In consequence, CHAP.
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Thomas Meyle, Esquire, their speaker, sent his warrant to bring before the house the sheriff of London, and those who were concerned in the arrest. Some of them were committed to the Tower, others to Newgate, where they continued until they were discharged on the petition of the lord mayor. From this time the power and privilege of the house of commons increased progressively.

Henry the Eighth, one of the most despotic of our princes, attempted no limitation of the succession of the crown by his prerogative alone. In the great variety he made during his reign, he always had the concurrence of parliament. He obtained an act to dissolve his marriage 25 H. 8, 22. with Queen Catherine and set aside his daughter Mary, limiting the succession to his issue by 26 H. 8, 2. Anne Boleyn, his second wife. Afterwards he 28 H. 8, 71 procured another act to illegitimate both his daughters Mary and Elizabeth, and to settle the crown on his issue by Jane Seymour; and in MS. Parl.,
cap. 6. default of such issue to give power to the king to name and appoint a successor by letters patent, or by his last will and testament. By a 35 H. 8, 1. subsequent act, in case his son Edward, whom he had by Queen Jane, should die without issue, and the king should have none by his queen, Catherine Parr, then the crown was to

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go to Princess Mary, with the proviso, however, that she observe such limitations or conditions as shall be declared by the king's letters patent under his great seal, or by his last will; and in default of issue by Mary, the crown was to go to Princess Elizabeth under the same limitations or conditions; and in default of issue by her, or not complying with the king's limitations or conditions, then the crown should go to any other who shall be declared by the king's letters patent, or by his last will. Thus were his daughters illegitimated by one act, and restored by another. The parliament of Henry the Eighth enacted what he thought proper; and it is remarkable, that in all the limitations of the succession to the crown, no care was taken or any provision made for his sister Margaret, married to James the Fourth of Scotland. In the will which he made in the last year of his reign, the children of his eldest sister Margaret were entirely overlooked, and the issue of his youngest sister Mary preferred, who was married, first, to Lewis the Thirteenth of France, by whom she had no issue; and afterwards to Charles Brandon, duke of Suffolk, by whom she had two daughters.

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Thus did Henry change the limitation and succession of the crown in what manner he pleased, and with the concurrence of parliament.
25 H. 8, 20. The first fruits and tenths were taken from the

pope, and the king declared supreme head of the church of England. He made void all the pope's bulls, briefs, faculties, and dispensations; and that any person who sued for or obtained them from the pope, was liable to incur the penalties contained in the statute of provision and premunire passed in the reign of Richard the Second; and instead of the pope authorized the archbishop of Canterbury to grant dispensations, &c. to be confirmed by the great seal.

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26 H. 8, 1.
28 H. 8, 16.

3 Rich. 2,
c. 3.

Henry the Eighth was not only highly magnificent, but most exorbitantly profuse. The immense treasure left to him by his father, was soon squandered. The vast riches he procured by the dissolution of the monasteries, and the sale of their lands, were quickly spent. His frequent calls on his parliaments for subsidies were for the most part complied with; for, by keeping his parliaments of considerable duration, the members found, by experience, that they gave to receive. Indeed the subsidies and taxes granted by long parliaments resemble more the free gifts of the representatives themselves than grants from the people. Anciently, parliaments continued rarely above one session, as appears by the summons to parliament before the reign of Henry the Eighth. And when that king found it consonant to his views to have a long acquaintance with the representation of the people, they also found a sensible convenience

Parl. Sum.
passim.

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in their service, and when a fresh parliament was summoned, spared no expence to be re-elected.

Free election is the spirit of our parliamentary constitution, which frequent election will restore to ancient usage. The commons house of parliament, which ought to be a genuine emanation from, and representation of, the people, as well as the exclusive guardian of their purse, is the vital organ of the government. It is the only branch which is essential to liberty; and becomes interchangeably its cause and effect. Our ancestors expected such of their posterity as should represent the rest in parliament to be jealous and watchful guardians of the interests of the people, to watch the ministers of the crown, on whose conduct, as well as on the prerogative of the crown, they were established as a check. These are principles of our constitution devised by the wisdom, vindicated by the virtue, and cemented with the blood of our glorious ancestors. It is evident that long duration of parliaments greatly facilitates the corruption of the members, and removes that wholesome check or control on their conduct, a frequent recurrence to the opinions of their constituents. And so long as parliaments are extended beyond their constitutional bounds, so long as the people are not fairly and impartially represented, corruption will increase; debts and taxes will ac-

cumulate; our resources will be dissipated; the native energy of the people depressed, and the country deprived of its best defence against foreign enemies. The kingdom under long, and consequently corrupt, parliaments hath been proverbial for making war without wisdom, and peace without policy. Annual parliaments would always adhere to the true interests of the nations. An annual parliament would be, in fact, a national council, which would never suffer ministers to traffick away the blood and treasure of the country, either to flatter the weakness or partiality of the prince, or gratify their own avarice or ambition. Such parliaments would give stability and permanency to administrations, by extinguishing party and faction, leaving a minister of state nothing to do, but attend to the duties of his office, and the adoption of plans for the public welfare. His station then would have no charms for unprincipled men. It would be only desirable to those of a generous ambition for serving their country by their personal labours, and who could content themselves with no more power than should be consistent with the liberties of their fellow-citizens. Such men would be too estimable in the opinion of the public, and consequently in the judgment of an annual parliament, ever to be disturbed by an ill-intended opposition to their wise and honest measures. Opposition, from

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which alone we find protection against tyranny in a corrupt state of things, is in itself an evil, but it is an evil which would vanish together with long parliaments: for to them it owes its birth, and with them must terminate its existence.

In the thirty-fourth of Henry the Eighth, an act was passed to impower the king to dissolve old boroughs in the principality of Wales, and to make new ones where he pleased for seven years, and the parliament put the power of legislature into his hands. This statute enacts that the king might make laws and ordinances for the government of Wales at his pleasure.

21 Jac. 10.

This latter clause, however, was repealed in the reign of King James.

25 H. 8, 22.

Henry obtained an act to confirm his marriage with Anna Boleyn, and to declare such person traitor as should write or speak against the validity of that match.

26 H. 8, 2.

Having also procured subsidies, and whatsoever he pleased from his parliaments, he steered a middle course in regard to religious matters, in order to obtain his ends, and to please such as were inclined to a reformation, and such as were disposed to continue under the old system. In which situation, both parties thinking he could not continue long this mode of conduct, vied with each other in complying with the king's inclination, striving which should be the most eager to

answer all his demands, that he, being satisfied with their actions in parliament, might be the more indulgent to their principles. The friends of the old religion were afraid of his going further lengths, and that their opposition or non-compliance with his will might induce him to finish as he had begun. Both parties endeavouring to gain the favour of this ambitious prince, gave him an authority much greater than any of his predecessors ever could obtain, and which he would not have been able to usurp, under any other circumstances, without endangering his crown. But they were deceived; the king kept on in the same course until his death, and made both parties feel the effects of their compliance, by establishing an arbitrary power which they had permitted him to assume; an awful lesson to the national trustees, not to suffer any attempt whatever of the king or his ministers which might tend to destroy the ancient rights and privileges of the people. After this complaisant parliament had been endured by the people for six years, and had agreed to the suppression of the smaller monasteries, and to whatever the king demanded, he dissolved, ^{27 H. 8, 22.} and left them to reflect on their weakness.

Within four years after the dissolution of the ^{31 H. 8,} smaller monasteries, the rest were, by act of ^{13.} parliament vested in the king, and he obtained surrenders which the parliament made valid by

CHAP. an act of legislature. This parliament also placed
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 a species of legislature into the hands of the
 31 H. 8, 8. king, to the effect that the monarch for the time
 being might, with the advice of his council, set
 34 H. 8, 23. forth proclamations with pains and penalties
 annexed, which were to be obeyed as if they
 were enacted by parliament. There was an
 exception, however, that these proclamations
 should not be prejudicial to any person's inhe-
 ritage, affairs, liberties, goods and chattels, or
 his life. Thus did this parliament, elected as
 the guardians of the rights of the people, by its
 own acts render the king despotic.

The parliaments of this reign gave up their
 own rights and the liberties of the people they
 represented, and appeared to be mere instru-
 ments to gratify the king's avarice and ambition,
 without duly weighing the fatal consequences
 27 H. 8, 4. which might attend his demands. At length
 they completed their work, and vested the
 revenues of colleges, free chapels, chauntries,
 hospitals, fraternities, guilds, and stipendiary
 priests, in the king, having previously given
 him all the lands belonging to the knights of
 St. John of Jerusalem, as soon as it was known
 he wished to possess them.

In the reign of Henry the Eighth the follow-
 ing counties and boroughs in Wales were im-
 37 H. 8, 26. privileged by act of parliament to send each one
 member :

Anglesea county,	Flint county,
Beaumaris,	Flint town,
Brecknock county,	Glamorgan county,
Brecknock town,	Cardiff,
Cardigan county,	Merioneth county,
Cardigan town,	Montgomery county,
Carmarthen county,	Montgomery town,
Carmarthen town,	Pembroke county,
Carnarvon county,	Pembroke town,
Carnarvon town,	Haverfordwest,
Denbigh county,	Radnor county,
Denbigh town,	New Radnor.

The county and city of Chester had their own parliament until this reign; they were now incorporated with the English parliament, and sent two members each. The towns of Buckingham and Berwick upon Tweed first sent members in this reign by writ of summons, although Buckingham appears by Domesday Book to have been a Saxon borough. Orford, in Suffolk, which had been discontinued since the time of Edward the First, was again restored. The county of Monmouth was likewise impriviledged to send two members, and the town one. Calais, in France, was also summoned the twenty-ninth of Henry the Eighth, and continued to send members during the whole of this reign, and in those of Edward the Sixth and Queen Mary, until it was recovered by the French. Edward

Rymer's
Federa, vol.
xiv. 567.

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the Sixth recites in the writ of summons, "that
" his father, King Henry the Eighth, had granted
" this privilege to Calais to elect one burgess
" when he sent his writ or precept to elect."
The returns Calais made are these :

EDWARD THE SIXTH.

1 P. at Westminster — Thomas Fowler, gentleman.
7 — Ditto — Thomas Massingbird, gent.

MARY.

1 P. at Westminster — John Aster, Edmund Poynton.
1 — Oxford — Willim Horne, John Aster.

PHILIP AND MARY.

1 and 2, at Westminster, - Henry Council, Oliver Lovibond.
2 and 3, ditto — Edmund Peyton. —

CHAPTER XVIII.

THE first parliament of Edward the Sixth met at Westminster on the fourth of November, 1547, and repealed the act of the twenty-eighth of Henry the Eighth, which authorized his successors, after the age of twenty four years, to annul, by their letters patent, all former statutes passed by them before they had arrived to that age. Henry the Third cancelled his charter when he was at full age, because it was confirmed in his minority. But he had not the consent of the parliament to do this; which, far from approving the measure, never desisted until they procured the Earl of Kent, adviser of the king, to be degraded in parliament. Henry the Eighth knew so well how to manage his parliaments, that he could obtain acts of legislature for what he pleased: but Edward thought cancelling and repealing statute laws was a power too great to be lodged in one part of the legislature; and that it was highly just and proper that laws should not be repealed, or disannulled by any other authority than the whole legislature by whom they were made. The act of the

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thirty-seventh of the last reign, which gave to royal proclamations the force of acts of parliament was repealed; as also the statute of the six articles passed in the thirty-first year of Henry the Eighth which Gardiner, Bishop of Winchester, promoted to thwart Cranmer's design of privately introducing the doctrine of Luther, as well as the several acts of treason made since the twenty-fifth of Edward the Third.

King Edward, after the manner introduced by his father, continued the parliament called in the first year of his reign by several prorogations until his fifth year, when the Duke of Northumberland caused the parliament summoned in the administration of the Duke of Somerset to be dissolved, that he might procure one more congenial to his views.

Burnet's
Reform.
vol. ii. 96,
222.

In the third year of this reign, a bill was laid before the house of commons for the purpose of reforming processes at common law. It went through that house, but when sent to the lords, was there lost.

The king having the reformation of religion much at heart, the Duke of Northumberland took advantage of this principle to induce Edward to settle the crown by letters patent on Lady Jane Grey, daughter of the Duchess of Suffolk, who was next in the entail as limited by Henry the Eighth, and who was willing to

resign her right to her daughter. Accordingly the king signed his letters patent, wherein he settled the crown upon Lady Jane Grey, and intended to have laid it before parliament for confirmation, but was prevented by death. The judges, Montague, Baker, and Bromley, refused to draw the assignment of the crown, until Northumberland, by threats, and the promise of a pardon under the great seal, prevailed upon them to draw out the settlement, which all the judges signed except Hales, and all the privy councillors, exclusive of Archbishop Cranmer, who merely attested the execution of the deed by the king.

Before the reign of Edward the Sixth, the eldest sons of peers were not eligible to sit in the house of representatives as members: the first instance we find, was Sir Francis Russell, who while he was a younger son of Lord Russell, was elected knight of the shire for Buckingham, in the first parliament of Edward the Sixth. On the death of his elder brother it was debated in the house of commons whether he should continue to be a member as before, which was determined in the affirmative, and entered on the journals the twenty-first of January, 1550.

Upon the death of Edward the Sixth, the council prevailed on Lady Jane Grey, who was married to Guildford Dudley, son of the Duke

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XVIII.Burnet's
Reform.
vol. ii. 143.

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of Northumberland, much against her inclination, to issue out a proclamation, claiming her right to the crown of England, founded on Henry the Eighth illegitimizing his daughters, and Edward the Sixth settling the succession by his letters patent on her. But circumstances were suddenly changed. Princess Mary was proclaimed queen on the nineteenth of July, 1553, by the Earl of Arundel and other lords, together with the lord mayor and citizens of London.

Edward the Sixth caused writs of summons to be sent to the cities of

Peterborough,

Lichfield, and

Westminster.

Thetford Norfolk.

Brackley Northampton.

Boston Lincoln.

Saltash, Camelford, West Looe,

Grampound, Bessiney, St.

Michael's, Newport, and Pen-

ryn Cornwall.

Maidstone Kent.

And he restored

Lancaster, Liverpool, Preston,

Wigan Lancaster.

St. Albans Hertford.

Petersfield Southampton.

Heydon, Thirske, Rippon. . . . York.

Queen Mary was crowned on the first, and parliament met on the fifth, of October, 1553. The representatives were very unconstitutionally elected in many places; in some, by force and threats; and in others, many voters were prevented by court influence from going to the places of elections. False returns were made; and several duly elected were dispossessed of their seats in the house by violence. However, to bring the parliament over to her interest, the queen, with a seeming generosity, issued a proclamation, remitting the subsidies granted by the last parliaments to Edward. Her intention was evidently to please the people in general, to the detriment of her brother's creditors; for these subsidies were granted to discharge the debts of Edward.

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Burnet's
Reform.
vol. ii. 252.

In this reign the authority of parliament is not mentioned in the preface to the statutes, but is recited in the body, as it was in the reign of Henry the Eighth, and which continued in the last reign as well as this. The form was, "Be it enacted by our sovereign lady, the queen, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, &c."

In the first parliament of Queen Mary, nine statutes relative to religion and church affairs, made in the last reign, were repealed; and it was

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enacted, that after the twentieth of December following, there should be no other form of divine service, than that used in the last year of the reign of Henry the Eighth.

Burnet's
Reform.
vol. ii. 261.

When the treaty for the Spanish marriage was made known, the house of commons sent the speaker, attended by twenty of their members, with an earnest and humble address to the queen, not to intermarry with a stranger. The house was so inflamed at the idea of such a marriage, that the court judged nothing could be obtained from the commons without they procured a satisfactory answer to their address. The parliament was, therefore, dissolved on the sixth of December, 1553, but not until it had undone all which had been effected in the reign of Edward the Sixth towards reformation of religion. Previous to the calling a new parliament large sums of money were remitted by the emperor to Gardiner, that he might influence the leading nobility, and carry elections in favor of those who would comply with the desire of the court. And he refused to administer justice in the court of chancery to such as would not conform to these unconstitutional measures.

Parl. Sum.
515.

The citizens of London being averse to the projected marriage with Philip of Spain, the parliament was summoned to meet at Oxford, on the second of April, 1554. The lord chan-

cellor, by granting pensions to many of the leading members of the house of commons, secured their interest. The English ministry having acceded to the exorbitant demands of the emperor, the marriage was solemnized, and the country bartered to a foreign catholic by a treacherous minister and a corrupt parliament.

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The first parliament of Philip and Mary was summoned to meet on the twelfth of November, 1554, at Westminster. It recognized the regnant authority of a queen as equal to that of a king, by which the designs of the Spanish party were frustrated, who wished to have placed the reins of government solely in the hands of Philip, on the false conclusion, that the laws of England, declaratory of the royal prerogative, were vested in the person of a male, and never in a female.

On the ninth of November, 1555, the parliament was dissolved. During its sitting, an information was laid in the king's bench against thirty-nine members of the house of commons, for departing from their duty in parliament without having obtained the license of the king and queen: the offence being against those whose writs commanded their attendance. But the judges finding that the house thought the rights granted them by statute in the reign of Henry the Eighth, were invaded by that information, put off the hearing

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from day to day, until the attorney general declined to prosecute any further. From that time the commons took the punishment of their members into their own hands.

4 Philip &
Mary, 1557.

On the twenty-first of October, in the second and third of Philip and Mary, 1555, a new parliament was summoned to meet at Westminster. An act was passed, that whoever disturbed any person in possession of lands or goods that had been the property of the church, under pretext of ecclesiastic right, should be subject to a *premunire*; and another act was passed to confirm the queen's resignation of first fruits and tenths. In a subsequent parliament, however, it was stated, that the queen intended to rebuild the monasteries, and restore the lands which had been alienated. The knowledge of this intention created such warmth of debate in the commons house, that several of the members laid their hands on their swords, saying, "They knew how to defend their own properties." This intrepid conduct put a stop to the intentions of the court.

Mary having entered into a war with France, sent for the speaker of the house of commons, and ordered him to lay before the house the condition the country was in by the war. The commons, however, were so dissatisfied, that they refused the subsidies. And although the lord chancellor, lord treasurer, and several

lords, went to the house to endeavour to procure the money required, yet the commons continued the debate for that and the two following days without coming to any resolution. The queen having, in the commencement of her reign, gained the concurrence of her parliaments by bribes, and conferring pensions, withdrew the latter, when she imagined herself secure of the interest of the members. This, together with her barbarous executions, caused her parliament, in the latter part of her life, not to be so very compliant as they had been.

By the printed journals of this reign, it appears that the house of commons possessed the power of determining on the qualification of the members returned, &c., and of directing new writs to be issued in case of double returns. But it is remarkable, that there are not in its journals any traces entered of complaints on undue elections of members to parliament. Notwithstanding, Bishop Burnet asserts, that there was foundation for a greater number than had ever happened in any reign preceding.

Queen Mary restored,

Droitwich Worcestershire.

Woodstock Oxfordshire.

And she created,

Aylesbury Bucks.

Abingdon Berks.

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Aldborough	Yorkshire.
Banbury	Oxfordshire.
Boroughbridge	Yorkshire.
Castle Rising	Norfolk.
Higham Ferrers	Northamptonshire.
Knaresborough	Yorkshire.
Morpeth	Northumberland.
St. Ives	Cornwall.

Mary reigned somewhat more than five years, and was succeeded by her sister Elizabeth ; at the beginning of whose reign these magistrates of cities and boroughs of the Romish religion were removed, for others who were advocates for the reformation, and were instructed to use all their credit and authority in influencing elections, that such members might be returned to parliament as would concur with the intentions of the queen in the projected change of church system. Although the parliaments in the preceding reign were chosen at the influence of the court, and Elizabeth and her ministry found it necessary to pursue the same measures in her first parliament ; the elections, however, during the remainder of her reign became free, as there was no distinction between the interest of the court and the people.

The first parliament of Queen Elizabeth passed an act for the restitution of the first fruits and tenths to the crown, and all ancient

jurisdictions; for the repeal of various statutes, and the revival of others, and for abolishing all foreign power.

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After her rejection of the offers of marriage from Philip, the parliament petitioned the queen to marry, and eight years afterwards renewed the request, which was not received so favorably as the first. Warm debates prevailed relative to the succession, and the Earl of Leicester even ventured to say, "That a husband ought to be imposed on her majesty, or a successor appointed by parliament against her inclination." The queen's title was recognized in the first year of her reign, and an act was passed in the thirteenth, to make it treason to affirm, that the queen, with and by authority of parliament, is not able to make statutes of sufficient force and validity, to limit and bind the crown of England, and the descent, inheritance, and government of the realm, and the succession.

Burnet's
Reform.
vol. ii. 384.

Camb. Life
of Q. Eliz.
lib. i. p. 93.

Leicester's
Life, 44.

In the parliament of the thirty-fifth of this reign, Sir John Puckering, lord keeper, declared in his speech the reasons for calling them together. The chief of which was, to raise subsidies to enable her majesty to fit out a fleet, and otherwise effectually to oppose the threatened invasion of the king of Spain. And he required particularly, in her majesty's name, that they should be expeditious in granting the supplies,

MS. Journ.
of 35 Eliz.

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and not spend their time in long speeches, and devising new laws and statutes. That the number of them burdened the subject, and that it would be of much service to make an abridgment. In answer to the lord keeper's speech, Sir Francis Bacon observed, "such an abridgment could neither be done suddenly, nor in one parliament: a year could scarce suffice to purge the statute book, and lessen the volume of laws. They were so many in number that neither the common people can half practise them, nor could the lawyers sufficiently understand them."

When both houses met after an adjournment of a few days, and the queen was seated in that of the lords, the commons went thither and presented Edward Coke, Esq. whom they had elected speaker, who, according to usage and custom, made a disqualifying speech, and then had his election confirmed by the queen. He then made the three petitions, in the name and behalf of the commons, which form the groundwork of what has been demanded from succeeding monarchs. First, that liberty of speech and the ancient custom of parliament be granted. Secondly, that they may have access to the monarch to present those things which shall be considered amongst them. Thirdly, that the royal assent be given to whatever is agreed upon.

The commons, in the reign of Elizabeth, made frequent attempts to extend their privilege, all of which proved abortive. She never refused their just rights and liberties, at the same time she would not suffer the least infringement on the royal prerogative. She put a negative upon more bills than any of her predecessors had done, and rejected seven which were drawn up by the commons for a farther reform in religion. By her equitable administration, this princess acquired a greater degree of popularity than any of her predecessors. During her reign, a general unanimity prevailed between the court, the parliament, and the people. She never asked subsidies that were not granted with cheerfulness, as it was well known, they would be applied solely to the advantage of the state. Was any other tenure necessary than that by which she held the sceptre, she possessed it in the affections of her people. By her extensive talent for government, and her select choice of able ministers, her resolutions acquired stability, and her councils were secret and wise; her undertakings successful, and her reign prosperous and eminently glorious.

No demands were made on the house of commons for aids and subsidies, but when absolutely necessary. In the eighth year of her reign the queen remitted one of the four subsi-

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dies granted by parliament, when she found that three of them were sufficient for her demands. As elections were unbiassed, and the electors neither awed, courted, or bribed by her ministry, the people were represented in parliament according to their own choice. Sir Edward Coke gives an instance of bribery in this reign as an uncommon rarity. Thomas Long gave the mayor of Westbury four pounds to be elected a burgess. The matter was examined and adjudged in the house of commons; the mayor was fined, imprisoned, and expelled the house for a considerable time; for such corrupt dealings (says Sir Edward Coke), was to poison the fountain itself.

The queen, in the beginning of her reign, had two different descriptions of persons to conciliate towards her measures. One was of the old, the other of the new religion. The latter she chiefly promoted to places of trust; but in her council shewed an equal regard for both parties, retaining more than half of Queen Mary's counsellors, who were Roman Catholics. To these she added a few who were well affected to the reform, with whose moderation and abilities she was well acquainted.

In the twenty-seventh of the reign of Queen Elizabeth, Richard Coke, a member of parliament, having been served with a subpoena from the court of chancery, it was conceived by

the commons as a breach of privilege. But the lord keeper, Bromley, insisted the house had no privilege against subpoenas, as they pretended. Nor would he allow of the precedents made use of in the case, unless the house could prove the same had been allowed and ratified by precedents in the court of chancery. The ancient precedents were quite otherwise, for the commons did not inflict punishments for breach of their privileges, until they had conferred with the lords, who referred the punishment to the commons.

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Whilst the monasteries enjoyed their ancient possessions, there was no need of any act of legislature for the relief of the poor; so amply did those houses, the bishops, and other endowed ecclesiastics, give assistance to those in want. In the thirty-ninth of Queen Elizabeth, no less than eleven bills were brought into the house of commons for that purpose. This being looked upon as an innovation, the commons hesitated to give their consent, and the poor were left without any national provision for more than four years. Their wants appeared to be great, and so pressing, that in the forty-third year of the queen, an act was passed for a parochial relief, by levying a tax on each inhabitant. This was the first of that kind ever made in England, and even that might not have been found necessary at the time, if, at the dissolution of the monasteries, more of

Monast.
Engl., pref.
9.

43 Eliz.

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their lands had been appropriated to hospitals, or vested in the hands of trustees for the use of the aged and infirm, who were unable to maintain themselves and their families by industrious labour.

Glanv. Rep.
pref. 24.

There was, between the second and third session of the fourth parliament of Queen Elizabeth, an interval of five years; during which, the seats of many members became vacant by death: some were employed in the service of the state abroad: and others were unable to attend from illness. On a statement of these facts to the lord chancellor, he, during the prorogation, directed new writs to be issued for choosing other members in the room of those sick, absent, or deceased. This evidently opened a door for unconstitutional practices in the country, by members consenting to be reputed dead, or sick without hopes of recovery, in order to give opportunities for collusions with other persons, with whom they might bargain or agree, to be chosen in their stead; and in other respects, as these were frequently untrue, it was a grievance which required to be effectually remedied in future.

Ibid.

In the parliaments of the twenty-eighth and twenty-ninth of this reign, notice was taken in the house of the irregular election of the knights for the county of Norfolk; and there appeared an intention in the house of taking the matter

into serious consideration, and of inquiring into its merits. It was insisted that the merits of election and return were matters into which the house of commons had no right to inquire; and that it belonged only to the lord chancellor, from whose court the writs were issued, and into which they were returnable. Notwithstanding this the house persisted in their right, and passed various resolutions on the matter; particularly, that after two knights were duly elected, no new writ could be issued out for a second election, without order from the house of commons itself; and, that although the chancellor and judges were competent in their own courts, yet they were not so in parliament.

The following boroughs were restored in the reign of Elizabeth :

<i>Boroughs.</i>	<i>Counties.</i>
Tregony	Cornwall.
East Retford	Nottingham.
Andover, Newport, Yarmouth	Southampton.
Beverley	Yorkshire.

And the following were created:

Callington, East Looe, St.	
Mawes, St. Germain's, Fowey	Cornwall.
Berealston	Devonshire.
Corffe Castle	Dorsetshire.
Cirencester	Glostershire.
Queenborough	Kent.
Newton, Clitheroe	Lancaster.

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XVIII.*Boroughs.**Counties.*

Stockbridge, Christchurch, Ly-	
mington, Whitchurch	Southampton.
Aldborough, Eye, Sudbury . .	Suffolk.
Minehead	Somerset.
Tamworth	Stafford.
Bishop's Castle	Salop.
Haslemere	Surrey.
Richmond	York.

CHAPTER XIX.

THE chief concern of King James, on his arrival in England, was the formation of his ministry; and, although he possessed a strong partiality for his Scottish subjects, yet almost all the great offices of state remained in the hands of those who held them during the reign of Elizabeth. His right of succession was recognized in his first parliament held in March 1603. A great harmony seems to have then subsisted between the king and both houses, and amongst other acts was one appointing a committee of lords and commons to treat with a similar committee in Scotland, relative to an union between the two kingdoms; which, however, was not concluded until the reign of Queen Anne.

In the beginning of this reign the people of England became apprehensive, the king had too great an inclination to govern with despotic authority. Royal proclamations became more frequent than in former reigns; and James declared, "That his will and commands published " in them should be obeyed and taken for law."

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XIX.Rapin,
Hist. of
Eng.Gurdon, in
Parl.

This was surpassing the conduct of Henry the Eighth, who did not venture on such a step until his proclamations were rendered valid by an act of parliament. He gave strong indications of taking upon himself the direction of the manner of determining the right of controverted elections for the house of commons. When the proclamation for summoning a parliament in his third year was opened, it was found to contain evident symptoms of his intentions. It excited great fears that the privilege of parliament would be endangered, and the prerogative of the crown extended beyond what the constitution had limited.

An opportunity soon occurred for his majesty to declare his intentions regarding controverted elections. The house of commons had determined that Sir Francis Goodwin was duly elected knight for the county of Bucks, and that Sir John Fortescue was not duly elected. The king, resolving to interpose his authority, sent to the house of lords to demand a conference with the commons relative to the election of the sitting member. The commons would not grant the conference, as they did not imagine themselves under any obligation whatever to give an account of any such matter. By their speaker they assigned their reasons to the king why they could not admit of such innovation. However, all they could obtain from the king

was, a positive command to confer with one of the judges, instead of the lords. This measure was equally disagreeable; and shewing in writing why they could not comply with either conference, desired the lords to intercede with the king, that he would not make such a breach of their privileges. The dispute was only adjusted by Sir Francis Goodwin's yielding up his right, rather than become an instrument of quarrel between the king and commons. This expedient prevented matters being carried to extremity.

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From this circumstance, however, the king might plainly perceive, that no great respect was paid to that part of his proclamation for calling the parliament, in which he published his intention to determine, himself, controverted elections of members of the house of commons. The commons might justly look upon this as a prelude to greater incroachments upon their privilege; and, indeed, they became, from this time, fearful of losing those privileges which they claimed from ancient usage.

In this parliament first arose that remarkable distinction of party denominated *Whig* and *Tory*, which continued to the reign of Charles the Second; the latter supported an extension of royal prerogative, while the former was the strenuous advocate of the rights, liberties, and properties of the people. Royal prerogative, and privilege of parliament, particularly that of

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the house of commons, are of much later date than that of the house of lords. The privilege of the commons increased by degrees, and must be defined by custom, usage, and precedent; while that of the lords was by original contract between them and their leaders in conquest.

The king, on succeeding to the rich and powerful monarchy of England, flushed with the grandeur of the English court, and raised by the flattery of sycophants into an opinion of his own wisdom and boundless power, in his speeches to parliament, and proclamations to the nation, assumed such high monarchical stile, and declaimed so much about the divine right of princes, and the implicit obedience of their subjects, as to give his parliament and people just reason to fear, that, instead of the ancient constitution of England, a monarchy limited by original contract between the ancient princes and the people, established and known by custom and usage, he aimed at more despotic sway than his predecessors had ever ventured. Hence his whole reign was one continued struggle between him and his parliaments to ascertain the just limits of prerogative and privilege.

The English recognized King James as their lawful sovereign by right of succession, without making any terms with him. His Scottish subjects did not fail to improve this to their own advantage. Their growing greatness and

favor at the English court, together with the power of the prime minister, produced the distinction of court and country party, which latter they strove to debase by the title of faction.

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A faction may arise against liberty, in a monarchy limited by law, as well as against prerogative. Ministers of state who conspire against the lawful rights and liberties of the subject, advise and assist the prince to supersede law, by rendering his will absolute, are equally entitled to the odious name of faction, and equally deserve punishment with those pseudo-patriots, who conspire to distress the king and his government, while they administer justice according to law.

Those ministers who advised King James to disown any inherent right of the people to their privileges, and that they merely emanated from the favour of him and his predecessors, were far from rendering the king any service; for it awakened jealousy in the people, and made them more tenacious of their liberties. And this was most clearly evinced in the eighteenth year of his reign, by the parliament not intrusting the money granted by the act of subsidies to the discretion of the king, and the officers of his treasury and exchequer; but placing it with guardians of their own appointment; thus transmitting to posterity a precedent to the abasement of the honor of the crown.

CHAP.
XIX.Gurdon,
Parl. 436.

Ibidem.

In the early part of the reign of King James the First, a clergyman was chosen and returned for a borough, in the county of Cumberland. He was discharged by an order of the house, and another writ issued for a new election. And in the parliament which met in the twelfth of his reign, 1614, an order was made that the king's attorney should not serve in the house of commons; Sir Thomas Coventry, attorney-general, having been returned a member, was discharged by question, and a new writ was ordered to be issued. On the eighth of February, in the same year, an order was made that the king's attorney-general shall never serve in the house of commons as knight of the shire, citizen, or burgess.

During the meeting of the parliament in 1621, violent contests had arisen relative to the right of adjournment. The commons did not dispute the privilege of the king to prorogue or dissolve parliament, but they were not willing to submit to the power and right he arrogated, of adjourning them by commission. They looked upon it as an undeniable privilege to adjourn themselves. The king advised with the judges regarding the different effect adjournment by commission might produce from that made by the houses. They gave their opinion only on the case of the twenty-seventh of Elizabeth, when, in the journal of that year it is expressed,

Parl. Journal,
363.

that there was a committee appointed to sit, during the recess, and a commission from that queen to adjourn the parliament ; but, notwithstanding, the houses adjourned themselves, and committees sat during the adjournment. It was stated in the house of commons, that if the houses of parliament adjourned themselves, they might meet again of themselves, but if it was an adjournment by the king alone, then the session was terminated, and it could not meet again without the king's pleasure. The lords submitting to the king's commission for adjourning, the commons found themselves under the necessity of waiving their pretensions.

When the parliament met after the adjournment in November, 1621, a message was delivered to the commons with his majesty's commands not to interfere with any state matters but such as should be recommended to their consideration. This extraordinary mandate alarmed the representatives of the people. They conceived that this was intended to be made a precedent for the house not being permitted in future to debate upon any question but such as the king should think proper to direct, and thereby they should lose the privilege of being a free parliament. The king having charged the house with interfering in matters above their cognizance, was a circumstance which was supposed to have originated from a wilful misin-

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XIX.Parl. Journ.
383.

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XIX.Cot. Recor.
465.

4 Inst. 23.

formation by some of the members, and was the foundation of serious debate and strong animadversion. In the reign of Henry the Seventh, one Tyrrell, a member of the house of commons, was committed to the Tower, for acquainting the king with the debates in parliament, and both he and his posterity were, by an act, disabled for ever sitting or serving as a representative from any place whatever. There was a similar case in the reign of Queen Elizabeth, when Arthur Hall, Esq. was committed to the Tower for six months, fined five hundred pounds, and expelled the house for having published the debates.

Twenty-three grievances having been complained of in the house of commons, it was resolved that a roll should be made of them, and the king petitioned to remedy the same. Sir Edward Coke moved that their petition and the king's answer be enrolled and recorded according to ancient usage. This relates to the manner of redressing grievances by the petition of the commons, and the answer thereto, which had the force of law, and was statute law from the beginning of the reign of Edward the Third, to almost the end of that of Henry the Sixth.

Parl. Journ.
360, 361,
367.

In the session of the eighteenth of King James the First, Sir Edwin Sandys having spoken with great earnestness and freedom on various matters of moment, incurred the dis-

pleasure of the king and his ministers. The house, by its vote, cleared him from having given any just cause of offence; but, as soon as the adjournment took place, he was committed, by a warrant of the privy council, for a misdemeanor. After a confinement of nearly six months, he was liberated by a warrant from the king, a few days before the parliament again met. This affair not only created violent debates within the house, but gave occasion for much animadversion without.

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The king's ministers denied that Sir Edwin Sandys was committed for any thing said or done in parliament. This equivocation was apparent to the house; and it was declared, that no member of parliament ought to be confined, except for acts of felony, murder, or treason. It was contended, that members who had been cleared by the house, for expressions disliked by ministers, were not to be prosecuted by order of the privy council or otherwise. The statute of the fourth of Henry the Eighth expressly says, that a member of the house of commons might not be sued by the king or any other, during the parliament. And Lord Coke particularly expresses, that this statute is in affirmance, and declaratory, of the ancient law and custom of parliament.

Parl. Journ.
492.

4 H. 8, 8.

4 Inst. 9.

In the month of December, 1621, a committee was appointed to draw a declaration to his

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Journ. 460.

majesty of the proceedings of the house in the petition intended to be laid before him, and also concerning the privileges of the house. In this petition they intreated the king not to abridge them of their ancient right of freedom of speech in debate, and other parliamentary rights and liberties, their lawful and undoubted inheritance, received from their ancestors, without which it was impossible for them to discern truly matters under discussion, or give his majesty the necessary information. In his answer he states, that although it was not his intention to deny to the commons any lawful privileges, which they had heretofore enjoyed, yet he would not allow them to style their privileges their ancient and undoubted right of inheritance. He wished they had said, that their privileges were derived from the grace and permission of his ancestors and himself, for most of them grew from precedents which marked a toleration rather than an inheritance.

Notwithstanding the king had thus explained himself, a committee of the whole house was ordered to take into consideration every matter touching their liberties and privileges, and all things incident thereto. A protest was entered on the journals, declaring "That the liberties, "privileges, franchises, and jurisdictions of parliament, are the ancient and undoubted birth-right and inheritance of the subjects of Eng-

“ land. That the arduous and urgent affairs
“ concerning the king, state, and the defence of
“ the realm, and the making and maintenance
“ of laws, and redress of grievances, are proper
“ subjects, and matter of council, to be debated
“ in parliament; and that every member hath,
“ and of right to have, freedom of speech to pro-
“ pound, treat, reason, and bring to conclusion
“ the same. That the commons in parliament
“ have like liberty and freedom to treat of those
“ matters in such order as in their judgments
“ shall seem fittest; and that every member of
“ the said house hath like freedom from all im-
“ peachments, imprisonment, and molestation
“ (other than by *censure* of the house itself),
“ for or concerning any bill, speaking, reason-
“ ing, or declaring any matter or matters touch-
“ ing the parliament or parliament business;
“ and that if any of the said members be com-
“ plained of, and questioned for any thing said
“ or done in parliament, the same is to be
“ shewed to the king by the advice and assent
“ of all the commons in parliament assembled,
“ before the king give credence to any private
“ information.”

This spirited declaration of the privileges of the commons, gave great offence to the king, as it militated most forcibly against that *divine right* which he asserted belonged to princes, and which he had endeavoured, ineffectually,

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to inculcate among his subjects. In the proclamation which he issued for dissolving this parliament, he dwells particularly on this protestation for their liberties, which, he says, was concluded in such ambiguous and general words, as might serve for future times to invade most of the inseparable rights and prerogatives annexed to the crown, which had been enjoyed by his progenitors, and by Queen Elizabeth; an usurpation which the *majesty* of a *king* could by no means endure.

Parliaments have been the basis of all the Gothic governments from the remotest antiquity. No other expedient has been found so effectual to keep the rage of prerogative within its due and appropriate limits. They may be traced by their ruins in almost every country in Europe at this day. But from these ruins it is evident, that through the craft and perfidy of kings, the degeneracy of mankind, and the extinction of that noble spirit which ever accompanies liberty, they are liable to be shaken by storms, and to become the prey of their own corruption. While we admire the beauty of the structure, we tremble for its foundation.

The following boroughs were restored in this reign :

<i>Boroughs.</i>	<i>Counties.</i>
Harwich	Essex.
Evesham	Worcester.

<i>Boroughs.</i>	<i>Counties.</i>
Ilchester	Somerset.
Pontefract	York.
Agmondesham, Wendover, Great Marlow	Buckingham.
Hertford	Hertford.

In all, sixteen.

The following boroughs were created in the same reign :

<i>Boroughs.</i>	<i>Counties.</i>
Cambridge University	Cambridge.
Oxford University	Oxford.
Bewdley	Worcester.
Tewkesbury	Gloster.
Tiverton	Devon.
St. Edmund's Bury	Suffolk.

In all, eleven.

Omitted, none.

The contests for privilege and prerogative which had commenced in the last reign were carried to the utmost stretch in that of Charles the First. This king appears never to have been on good terms with his parliaments ; and who at last pushed him, in their struggles for liberty, to such extremities, as ultimately terminated in his death, and caused a total change in the constitution. Their violent contest, however, had one happy effect, that it fixed more precisely than had hitherto been done, the

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exact limits between the privileges of the people and the prerogatives of the sovereign. The former will never wish to encroach upon the latter, as long as the prince justly considers them as so many powers intrusted to him for the preservation of his subjects; nor will the latter desire to trench upon the former while they are kept within proper bounds, and are regarded as the greatest security of their own throne, and the surest foundation of the loyalty of the people.

The grievances of which the commons complained were forced loans, benevolences, taxes without consent of parliament, arbitrary imprisonments, the billeting of soldiers, martial law; grievances which had become intolerable, and against which it was necessary to provide some effectual remedy. They pretended not to any unusual powers or privileges; they aimed only at securing those which they had received from their ancestors. Their law for attaining this salutary purpose they thought proper to denominate a *petition of right*, as implying that it contained a corroboration or explanation of the ancient constitution, not any infringement of royal prerogative, or acquisition of new liberties. Charles at first discovered a strong reluctance to agree to the statute, but at last was induced, or rather compelled, to give his assent, though the enacting clauses were simply these:

“ That no man hereafter be compelled to
“ make or yield any gift, loan, benevolence, tax,
“ or such like charge, without common consent
“ by act of parliament; and that none else be
“ called to make answer, or take such oath, or
“ give attendance, or be confined, or otherwise
“ molested, or disquieted concerning the same
“ or for refusal thereof. And that no freeman,
“ in any such manner as is before mentioned, be
“ imprisoned or detained. And, that your ma-
“ jesty will be pleased to remove the said sol-
“ diers and mariners, and that your people may
“ not be so burdened in time to come. And, that
“ all commissions for proceeding by martial law
“ may be revoked and annulled, and that here-
“ after no commissions of like nature may issue
“ forth to any persons whatsoever, to be exe-
“ cuted as aforesaid, lest, by colour of them,
“ any of your majesty’s subjects be destroyed,
“ or put to death, contrary to the laws and fran-
“ chise of the land.”

But notwithstanding, this spirited parliament had weight enough with the court to carry their petition into a law, the king so far resented their subsequent attempts to obtain a more effectual and comprehensive redress of grievances, that he dissolved them without even requiring the attendance of the commons, whom he stigmatized in his speech as *undutiful* and *seditious*, and never summoned another parliament for the

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space of *twelve* years. As he could not, however, raise money in the regular way without those assemblies, he endeavoured to procure it by such other expedients as had been sometimes formerly practised, and were not expressly condemned by the petition of right: one of these was what is usually called ship-money: a duty originally confined to the sea-port towns; but this imposition was extended over the whole kingdom; each county was assessed at a particular sum, which was afterwards levied upon individuals, most of whom were either so simple or submissive as to comply with the demand. One man alone had the courage to resist it. This was the celebrated John Hampden, who, notwithstanding the declared opinion of the judges, the great power and rigorous maxims of the crown, and the small prospect of relief from parliament, which had not assembled for several years, or was likely to meet for years to come, resolved, rather than tamely submit to so illegal an imposition, to stand a legal prosecution, and expose himself to all the indignation of the court. The event was easily foreseen: a decision was given against Hampden, although four of the judges had the honesty to dissent from the sentence. It is to be lamented, that such is the depravity of human nature, that men may always be found to vindicate and execute the measures of the court, however unjust, arbitrary,

or unconstitutional. Hampden, however, gained the point at which he aimed: he roused the people from the profound lethargy into which they appear to have been generally sunk, and rendered them more attentive than they had been to the incroachments daily made upon their liberties. These indeed were now become so numerous and violent, that the nation seemed disposed to have recourse to any method, however extraordinary, to impede their further progress.

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During this long period in which no parliament had been called, the king had endeavoured to replenish his exhausted coffers by every arbitrary and illegal method; but even these resources failed, and Charles was constrained, however reluctantly, to have recourse once more to the assistance of parliament.

Accordingly one was summoned to meet in the 13th year of his reign, A. D. 1640. The members, recollecting with how much precipitancy the king had almost always dissolved former parliaments, without allowing them time to complete any measure that might tend either to their own honor, or to the advantage of their country, were determined, if possible, upon the present occasion, to prevent their being exposed to the like inconvenience. They therefore persuaded, or rather compelled, the king to declare

CHAP. XIX. them perpetual ; or, at least, that they should not be dissolved without their own consent.

Having gained this important point, and rendered their authority co-ordinate with the king's, they instantly proceeded to redress every grievance of which the nation at that time complained : and as the country had suffered severely from the long disuse of parliaments, it was natural that, when the time would permit, they should endeavour to prevent the like grievances for the future. Accordingly the Triennial Bill was passed, and made use of as a just and wholesome expedient to answer this salutary end. It provided that a parliament should be held in England every *third* year, and that the lord keeper and chancellor of the duchy should be sworn to issue the writs, or in default to lose their places. And if writs were not issued by the third of September in every third year, any twelve or more of the peers should be empowered to exert this authority. In default of the peers, that the sheriffs, mayors, bailiffs, &c. should summon the voters ; and that in their default, the voters themselves should meet, and proceed to the election of members in the same manner as if the writs had been regularly issued by the crown ; nor could the parliament, once assembled, be adjourned, prorogued, or dissolved, during the space of fifty days, without their own

consent. By this bill, some of the most valuable privileges of the crown were retrenched; but, at the same time, nothing could be more necessary than such a statute for completing a regular plan of law and liberty. A great reluctance to assemble parliaments must have been expected in the king, where these assemblies establish it as a fundamental maxim and permanent right, to scrutinize into every branch of the government. Charles, finding that nothing less would satisfy his parliament and people, at last gave his assent to the bill, which produced so great a change in the constitution.

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The power of the commons was now become extremely formidable, and they fortified themselves with terrors to overawe those who might be inclined to support the falling ruins of monarchy. The sovereign power was changed from a monarchy almost absolutely despotic to a pure democracy. All ranks were animated with the spirit of liberty. The arbitrary courts of high commission and star-chamber were abolished, and deprived the king of the power of levying taxes without the concurrence of parliament. By removing the star-chamber, the king's power of binding the people by his proclamations was destroyed; and as it was accustomed to punish infractions of the king's edicts, the parliament justly thought that it invested the supreme ma-

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gistrate with such powers as he might easily turn to the destrucion of liberty.

The animosities between the king and the parliament increased, and both parties prepared to decide the controversy by the sword. The nation was plunged into all the horrors of civil war. Cromwell was at the head of the military power, which he had rendered subservient to his views. The army had begun to arrogate to itself the whole power of the state ; and now possessed of the person of their sovereign, who had gone to the Scottish army at Newark, and was delivered up by them to the commissioners of the English parliament, but was seized by the orders of Cromwell, who could overawe and control the proceedings of parliament. It was now composed of three descriptions of men, as different and distinct in their principles as in the several names by which they were known. These were the moderate royalists, the presbyterians, and the independents. The first were for reducing the prerogative within proper bounds, but for preserving monarchy and episcopacy ; the second wished to abolish monarchy and establish episcopacy ; and the third, to abolish both, and establish a republic. The two former were superior in numbers to the latter ; but which soon acquired a complete ascendancy by the aid of Cromwell, who garbled the parlia-

ment, or, as it was then called, *purged* it; and having mustered a parliament entirely to his mind, began to entertain a resolution of bringing the king to trial. Many objections were made to this measure, but they were overruled by Cromwell and his adherents. The commons established a high court of justice, though contrary to the opinion and advice of the lords; and one hundred and thirty-three persons, seventy of whom only attended, were nominated as judges. Charles would not acknowledge the authority of the court, nor of those who composed it; and having refused to plead before them, they proceeded to pass sentence on him the twenty-seventh of January, 1649, and on the thirtieth he was decapitated.

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The following boroughs were restored in the reign of Charles the First:

Weobly	—	—	Hereford county.
Milborn port		—	Somerset.
Seaford	—	—	Sussex.
Cockermouth		—	Cumberland.
Okehampton		—	Devon.
Honiton	—	—	Ditto.
Ashburton	—	—	Ditto.
Northallerton		—	York.
Malton	—	—	Ditto.

Restored in all eighteen. Created none.

Omitted none.

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XIX.Hume, vol.
vii.

The house of commons having assumed the reins of government, immediately issued a proclamation, declaring it high treason to acknowledge Charles Stuart, eldest son of the late king, as sovereign of England. It even passed an act, abolishing the kingly power, as useless, burthensome, and dangerous. It next proceeded to abolish the house of lords, and decreed that the state should, in future, be governed by the representatives of the people, sitting in parliament, under the form of a commonwealth. On their seal, which they called the great seal of England, was inscribed, *In the first year of freedom, by God's blessing restored*, 1648. A council of state, consisting of thirty-eight persons, was named, to whom all addresses were made, who gave instructions to all generals and admirals, who executed the laws, and who digested all business before it was introduced into parliament.

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But the commonwealth was not long able to maintain its authority. They made small progress in the important work which they professed to have so much at heart, the settling of a new model of representation, and fixing a plan of government. While they pretended to bestow new liberties upon the nation, they found themselves obliged to infringe even the most valuable of those which, through time immemorial, had been transmitted from their

ancestors. Attempting in 1653 to disband some of the land forces, Cromwell, who was at the head of the army, and was aware that his influence depended solely upon that support, suddenly dissolved the parliament, and thereby put an end to the existence of the republic. To gratify the nation, however, with the appearance of a parliament he appointed one hundred and thirty-nine persons, known by the name of Barebone's parliament, to meet at Westminster, and manage the affairs of government. They were to exercise the legislative power for fifteen months, and were afterwards to choose their successors in that important office. Being chosen from among the very dregs of the people, they soon found themselves exposed to contempt and derision ; They therefore resigned their power into the hands of Cromwell, who caused himself to be proclaimed protector of England, Scotland, and Ireland, on the sixteenth of December, 1653.

The deed investing him with this high commission, was called the *instrument of government*, and contained the following articles. A council was appointed, which was not to exceed twenty-one, nor be less than fifteen persons. They were to enjoy their offices during life, or good behaviour ; and in case of a vacancy, the remaining members named three, of whom the protector chose one. The pro-

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protector was appointed supreme magistrate of the commonwealth. In his name was all justice to be administered ; from him were all magistracy and honors derived. He had the power of pardoning all crimes, except murder and treason : to him the benefit of all forfeitures devolved. The right of peace, war, and alliance rested in him : but in these particulars he was to act by the advice and with the consent of his council. The power of the sword was vested in the protector, jointly with the parliament while it was sitting, or with the council of state in the intervals. He was obliged to summon a parliament every *three* years, and allow them to sit five months without adjournment, prorogation, or dissolution. The bills which they passed were to be presented to the protector for his assent ; but if within twenty days it was not obtained, they were to become laws by the sole authority of parliament. During the intervals of parliament, the protector and council had the power of enacting laws, which were to be valid until the next meeting of parliament. A standing army for Great Britain and Ireland was established, and funds were assigned for their support. These were not to be diminished without the consent of the protector, and in this article alone he assumed a negative. The chancellor, treasurer, admiral, chief governors of Scotland and Ireland, and the chief justices of

both benches, must be chosen with the appro-
bation of parliament; and in the intervals with
the approval of the council to be afterwards
ratified by parliament. The protector was to
enjoy his office during life; and on his death
the place was immediately to be supplied by the
council.

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Such was the instrument of government, by which the protectorship was conferred upon Cromwell. Notwithstanding his manifest usurpation, the people, in general, submitted to his authority with much less reluctance than might have been expected. Their hatred of the *long*, or as it is now called, the *rump* parliament, was so great, that they were willing to acquiesce in any other kind of government. And it may be added that Cromwell conducted himself in his high station with as much equity, and even lenity, as could be expected from one in his delicate circumstances.

He summoned only two parliaments, besides Barebone's, during the whole course of his administration. The first of those proved somewhat refractory, and even began to dispute his authority; but he obliged the second, partly by force and partly by intrigue, to confirm his protectorship, and even to make him a tender of the crown. His abilities as a statesman were by no means proportionate to his courage and conduct as a soldier. After he had obtained

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the supreme power, he appears to have been at a loss what kind of government to establish. The extent of his authority was never precisely determined; and perhaps, had it not been for the well grounded apprehension of being opposed by the army, he would willingly have accepted the title of king. It is indeed difficult to conjecture, from his instrument of government, whether he meant to establish a tyranny or a republic. On the one hand, a first magistrate in so extensive a government seemed necessary for the dignity and tranquillity of the state; and the authority which he assumed as protector was in some respects inferior to the prerogative which the laws did and do still intrust to the king. On the other hand, the legislative power, which he reserved to himself and council, together with a great army, independent of the parliament, were bad prognostics of his intention to submit to a civil and legal constitution. But if this were not his intention, the mode by which the system of elections was carried on, being so favorable to liberty, forms an inconsistency for which we cannot easily account. He deprived all the small boroughs of the right of election, places the most exposed to influence and corruption. Of four hundred members, which represented England, two hundred and seventy were chosen by the counties. The remainder were elected by London, and

other considerable corporations. The lower populace, were excluded from the elections, and an estate of two hundred pounds value was necessary to entitle any one to vote. The elections of the parliament of September, 1654, were conducted with perfect freedom, and excepting the exclusions of those who with their sons had carried arms against the parliament, a more fair representation of the people could not be desired or expected. Thirty members were returned for Ireland: as many from Scotland.

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When the parliament was summoned in 1656, Cromwell used every art, which his new model of representation allowed him to employ, to influence the elections, and fill the house with his own creatures. Notwithstanding all his precautions, the protector still found that the majority would not be favorable to him. He had imagined, that from the success gained abroad, and the tranquillity at home acquired by his administration, he had now attained such authority as would enable him to meet the representatives of the people, and assure him of their dutiful compliance with his government. None were permitted to enter the house but such as produced a warrant from his council, and a hundred were rejected who either refused a recognition of the protector's government, or were on other accounts obnoxious to him. This was subversive of all liberty; but every

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When the regal title was refused by Cromwell the parliament thought it necessary to sanctify the existing government by the choice of the people and their representatives. Instead of an *instrument of government, humble petition and advice* was framed, and offered to the protector by the parliament. This was to be the great basis of the republican establishment, regulating and limiting the powers of each member of the constitution, and securing the liberty of the people to the remotest posterity. By this deed the authority of the protector was in some particulars enlarged : in others restricted. He had authority to name another house which should enjoy their seats during life, and exercise some functions of the former house of peers. He abandoned the power assumed in the intervals of parliament ; and agreed that no members of either house should be excluded, but by the consent of that house of which they were members. This instrument was accepted as the voluntary deed of the whole people in the three united nations.

This parliament adjourned itself on the 26th of June, 1657, and again assembled on the 20th of January, in the year following. It now consisted, as in times of monarchy, of two houses. Cromwell during the interval had

sent writs to his house of peers, which consisted of sixty members. They were composed of five or six ancient peers, of several gentlemen of fortune, and of some officers, who had risen from the ranks. None of the ancient peers, though summoned, would deign to sit with such companions. The protector endeavoured at first to maintain the appearance of a legal magistrate. He placed no guard at the door of either house; but he soon found how incompatible the military powers he had assumed were with civil liberty. By bringing so many of his adherents into the upper house, he lost the majority among the national representatives. In consequence of a clause in the humble petition and advice, the commons assumed a power of re-admitting their members, whom the council had formerly excluded. Many of those whom Cromwell had created lords, rather chose to take their seats with the commons. A majority now declared themselves against the protector, and they refused to acknowledge the jurisdiction of the other house, which he had established. They even questioned the validity of the *humble advice and petition*, as having been voted by a parliament deprived of a number of its members by military violence. Dreading a combination between the parliament and the disaffected in the army, Cromwell resolved to allow no time

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for forming any league against him, and therefore dissolved the parliament.

Cromwell was succeeded in the protectorship by his son Richard, who was proclaimed without opposition, on the fourth of September, 1658, the day after the death of his father. His first step was to summon a parliament, which met at Westminster, on the twenty-seventh of January, of the ensuing year. In hope of obtaining greater influence in elections, the ancient right was restored to all the small boroughs, and the counties were allowed no more than their usual number. The house of peers, or the other house, consisted of the same persons appointed by Oliver. This parliament confirmed the authority of Richard, and was proceeding to other matters, when its deliberations were interrupted by the cabals of the army. These in a great degree proceeded from the unwary consent which Richard gave to the calling a council of officers.

In the commencement of the civil war, while the issue of the dispute was yet uncertain, the parliament and army had acted with the most cordial union. But when they had acquired an incontestable superiority, jealousy and distrust arose between them. The army, though they seemed to acknowledge the authority of parliament, was, in reality, the spring of every political movement. Oliver, by the vigor of

his administration, had prevented them breaking into violent excess ; but his successor had neither resolution nor penetration, to prevent their open assumption of the supreme authority they had long secretly possessed.

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The officers were no sooner assembled than they presented a petition to Richard, requesting the power of choosing their own general. The parliament, alarmed at this demand, voted, that there should be no council of officers during its sitting. This vote brought matters immediately to a crisis. The officers hastened to Richard, and compelled him to dissolve the parliament. By the same act the protector was considered as effectually deposed, and soon after he signed in form his deposition.

The council of officers assumed the reins of government ; but finding the people would not be satisfied without a parliament, or something bearing its name, they restored the *long* or *rump* parliament, which Oliver had dissolved in 1653. The numbers of this parliament did not exceed seventy persons. Parliaments, however, or men in a civil capacity, seldom wish to act under military control ; and they began to concert measures for placing the military under civil jurisdiction. Fleetwood, Lambert, and other officers, suspecting their design, expelled them the house, and appointed twenty-three persons, whom they called a *committee of*

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safety, and to whom they pretended to intrust the sole administration of affairs, which, nevertheless, they determined to retain in their own hands. They spoke every where of summoning a parliament chosen by the people; but they only endeavoured to assemble a military parliament, composed of officers elected from every regiment in the service.

Such scenes of anarchy and confusion could not fail to disgust the nation in general, particularly the presbyterians and loyalists, who composed the chief body of the people. To free themselves from the dangers by which they were surrounded, and those which seemed fast approaching, they began to entertain thoughts of restoring the king; a measure which they imagined might be easily effected, could they secure Monk in their interest. This general was at the head of the army in Scotland, and it is not improbable, that he had already begun to form the same design. But as he had observed the most profound secrecy, he affected to disregard the applications made to him. Nor would he enter into any correspondence with the king, nor with any one, until affairs were brought to a more favorable point. To bring them, however, into the posture he wished, he marched into England, with the sole view of vindicating, as he gave out, the rights of the expelled parliament, and re-establishing them

in the authority they had formerly possessed. CHAP.
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The greatest part of the army espoused the cause, and Lambert, who was the soul of the opposite party, was imprisoned in the Tower. The *rump* parliament being freed from all kind of restraint, assembled once more on the twenty-sixth of December, 1659. This revolution, however, did not interrupt the march of General Monk, who continued to advance, though still under the pretext of supporting the authority of parliament. He was aware that the people in general were enraged at the tyranny of the rump parliament, and the army, and that the assembling of a free parliament, and the restoration of the king, were one and the same thing. In the speech made by him to the house, he stated, that he had, on his march, observed all ranks of men, in all places, to be in earnest expectation of a settlement, after the violent convulsions to which they had been exposed; and to have no prospect of that blessing, but from the dissolution of the present parliament, and from the summoning of a new one, free and full, who, meeting without oaths or engagements, might finally give contentment to the nation. That applications had been made to him for that purpose; but that he, sensible of his duty, had still told the petitioners, that the parliament itself, which was now free, and would soon be full, was the best

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judge of all these measures, and that the whole community ought to acquiesce in their determination. That though he expressed himself in this manner to the people, he must now freely inform the house, that the fewer engagements were exacted, the more comprehensive would their place prove, and the more satisfaction would it give to the nation. And that it was sufficient for public security, if the fanatical party and the royalists were excluded; since the principles of those factions were destructive either of government or liberty.

This speech upheld that uncertainty in which it was the general's intention to retain the public. It was his intention that the country should remain long in this doubtful state. The people, as well as the parliament, pushed matters to a decision. The citizens of London refused to pay any more taxes until a free parliament should be assembled. The house commanded Monk to march into the city, and punish those who disputed their authority. He repented of the steps he had taken in consequence of these orders, and complained to the house of the odious service in which they had employed him. He apologized to the inhabitants for the violence he had offered them, and established a close correspondence between them and the army.

On the twenty-first of February, 1660, the

secluded members went to the house. The ordinances by which the restored members had been excluded, were repealed; and having passed several votes for the present composure of the kingdom, they dissolved themselves, and issued writs for the immediate assembling of a new parliament. This measure had been previously concerted with Monk, who knew, that in the present state of men's minds, the elections would run entirely in favor of the royal cause. A message was sent by Monk to his majesty, who was then in Spain, exhorting him to retire to Holland, and depute some person to lay his proposals before parliament. The parliament met on the twenty-fifth of April, and the king's letter was approved of. A deputation was sent to invite his majesty to return. He was accordingly proclaimed king on the eighth day of May, with the usual solemnity.

The people returned representatives on a republican basis; these representatives admit the lords to their ancient share in the legislature, and both houses in conjunction, in the instrument they issued for the proclamation of King Charles the Second, tacitly renounce the right of approbation, if not election, reserved to the people, by a solemn declaration of his hereditary right without reserve; and afterwards with more generosity than policy, invite him to take possession of the throne without

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conditions or limitations, which seem only to have been thought of in order to be rejected. It must, however, be remembered, to the credit of this parliament, that though the whole nation was in a manner become courtier at once, and scarce any concessions to the prerogative would then have been too extravagant, they did not proceed to settle the revenue on one hand, without deriving some advantage to the public on the other, as is evident from their stipulation for abolishing the *court of wards and liveries*, in lieu of a grant of one hundred thousand pounds per annum.

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Charles and his parliaments were soon at variance; addicted to pleasure, he considered the government of the state merely as the means of procuring money to satisfy his prodigality. He even ventured to demand a repeal of the triennial act, and went so far as to declare, that notwithstanding the law, he never would allow any parliament to be assembled by the methods prescribed by that statute. The parliament repealed the law, and instead of all the securities formerly provided, satisfied themselves with a general clause, "that parliaments should not be interrupted above three years at the most." As the parliament had now raised itself to be a regular check and control upon regal power, it is evident that they still ought to have preserved a regular security for their

meeting, and not to have trusted entirely to the good will of the king. Before the end of Charles's reign, the nation had occasion to feel very sensibly the effects of this repeal.

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During the seventh session of the first parliament of Charles the Second, the lords joined with the king in an attempt to annex the taking and settling the public accounts to the prerogative. The commons, however, voted it to be unparliamentary, and, although the king now ventured to treat them more cavalierly than he had hitherto done, at once maintained their temper and their privileges. In some of the following sessions, the two houses continued at variance, and the king did not find his affairs go on altogether so smoothly through the commons; but at length, having gratified them with penal laws against dissenters on one hand, and papists on the other, they became again so tractable as to give him whatever subsidies he required. Even the lords took the alarm, and thought it advisable to interfere, lest the representatives of the people should at once beggar their constituents, and render the upper house a mere non-entity.

But though they had been induced to fleece the people thus unmercifully, they still protected their own rights. When the lord chancellor, Shaftesbury, had taken upon him to issue out writs for filling up the vacancies in

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the house, which ought to have been done by an order of the house to the clerk of the crown, they immediately vacated those writs, and expelled the members who had been returned by them.

We have already observed, that Charles was almost perpetually at variance with his parliaments, and this misunderstanding rose at length to such a height, that he continued, during the latter part of his reign, to rule without parliaments. Being freed from the salutary restraint of these assemblies, he proceeded to invade, without fear or remorse, the most valuable privileges of his subjects. The city of London, and most of the corporations in England, were deprived of their charters; and although they were afterwards restored, yet they were held on such precarious conditions, as to leave the rights and liberties of the people entirely at the mercy of the king. The jealousy which the English entertained of Charles the Second arose from strong and well-grounded suspicion of his having formed designs destructive of their civil and religious liberties. They thought they could perceive in his whole conduct evident symptoms of his wishing to introduce both popery and arbitrary power. It was with a view, they imagined, of accomplishing the former point, that in 1672, he published a declaration of indulgence; an act

seemingly calculated for the benefit of all CHAP.
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dissenters without exception, but in reality meant only to promote, in a political light, the interests of the papists. The people, therefore, sensible of his design, raised such a clamour against it, that in the course of the ensuing year he was obliged to recal his intention.

The most important law enacted in this ^{31 C.²} reign, was the celebrated *Habeas Corpus* act, which was passed in 1679, and which secures the subject against arbitrary imprisonment. This is a grievance prevalent in every government in the world, and we owe our exemption from it to the patriotism of the second parliament of Charles the Second. Hume. Magna Charta had laid the foundation of this inestimable part of liberty: the petition of right had renewed and extended it; but some provisions were still wanting to render it complete, and prevent all evasion or delays from ministers and judges. The act of Habeas Corpus answered all these purposes. The preamble begins with stating, that “whereas great delays have been used by
“sheriffs, gaolers, and other officers, to whose
“custody any of the king’s subjects have been
“committed for criminal, or supposed criminal
“matters, in making returns of habeas corpus
“to them directed by sending out an *alias* and
“*pluries* habeas corpus, and sometimes more,
“and by other shifts, to avoid yielding obe-

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“ dience to such writs, contrary to their duty,
“ and the *known law of the land*, whereby
“ many of the king’s subjects have been, and
“ hereafter may be, long detained in prison, in
“ such cases where they areailable, to their
“ great charges and vexation.” By this act
it was prohibited to send any one to prison
beyond sea. No judge under severe penalties,
must refuse to any prisoner a writ of Habeas
Corpus, by which the gaoler is directed to
produce in court the body of the prisoner,
(whence the writ derives its name,) and to
certify the cause of his imprisonment and
detainer. If the gaol be within twenty miles
of the judge, the writ must be obeyed in three
days, and in proportion for greater distances.
Every prisoner must be indicted the first term
after his committal, and brought to trial in the
subsequent term. And no man after being
enlarged by order of the court, can be re-com-
mitted for the same offence.

This statute certainly forms a check to the
exercise of arbitrary power, but from the pre-
amble it appears that no new right was to be
granted. The abuse of the “ *known law of*
“ *the land*” was to be prevented, and those
who wereailable released from prison. But
this was only a partial restoration of ancient
privilege. Although this act admits persons
arrested for debt to bail, and suffers them to

be removed from one prison to another, yet it is very short of that law which existed in Alfred's reign, when no person was arrested for debt, and much less confined. It is, therefore, evident, this statute which has been extolled by those who are ever ready to praise the acts of royalty, as granting an invaluable privilege is no other than a very limited restorative of that personal liberty, to which the subjects of the realm are entitled by their ancient constitution.

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This parliament continued to act as they had begun, with the same laudable principles. They addressed the king against the Duke of York's second marriage with a popish princess, and voted standing armies, French alliances, and evil and corrupt ministers, grievances ; for which they were punished with an abrupt prorogation. But this did not deter them from resuming the same pursuit at their next meeting, when they proceeded vigorously against the cabal whose intentions were to render the king absolute. The parliament was still tenacious of popular privileges, and retained a considerable jealousy of the crown, even before they had received any just cause for suspicion. They voted the king's guards as unconstitutional ; and the majority continued firm to the true interests of the people until they were dissolved at the end of the eighteenth session.

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The election of members to serve in this parliament is perhaps the first in England, which, since the re-commencement of the monarchy, had been carried on by violent contests between the two parties, and in which the court interested itself to a high degree in the choice of the national representatives. But the efforts of corruption were fruitless in opposition to the prejudices which prevailed. Everything was at stake, and there could be no security but in a vigilant parliament. It was at this period that the abuse originated of splitting freeholds in order to multiply votes and electors; and which has since been carried to great excess.

The bishops before the Reformation had always enjoyed a seat in parliament; but instead of regarding that dignity as a privilege, they affected to form an independent order of the state, accountable only to the pope and their own order. By the constitutions of Clarendon, enacted in the reign of Henry the Second, they were obliged to attend in parliament. As the canon law prohibited their assisting in capital trials, they were allowed in such cases the privilege of absenting themselves. That which was at first voluntary, became afterwards a rule, and on the trial of the Earl of Stafford, the bishops, who would willingly have attended, and were no longer

bound by the canon law, were yet obliged to withdraw. The commons who were now enabled to make new acquisitions of powers and privileges, insisted that the bishops had no more title to vote in the question of the earl's pardon than in the impeachment itself. The house of lords, influenced by the reasons of the bishops, admitted their right to vote on the examination of the validity of the pardon. A quarrel commencing between the two houses, the parliament was dissolved without advice of council; and writs were issued for a new parliament on the tenth of July.

The new parliament met on the 21st of October, 1680, and the king endeavoured to be on good terms with them. But every step they took betrayed the zeal with which they were animated. They voted that it was their undoubted right to petition the king, for the calling and sitting of parliament. Those who were the advocates of this right were called *petitioners*; while those who addressed the king in a courtly style, professing their abhorrence of all incroachments on his prerogative were named *abhorrrers*. These epithets were now changed into *whig* and *tory*; names which exist to this day. Many of the abhorrrers were seized by order of the commons and committed to custody. The liberty of the subject, guarded as it was by Magna Charta, and the law of habeas corpus,

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was violated by such proceedings. The right of committal by the commons, as it cannot be exactly determined by law, must always appear, in a great degree, arbitrary. It may be carried to excess, and tend to serve the purposes of faction. The chief jealousy of the constitution is, and ought to be, naturally and justly directed against the crown. The resolute conduct of Stowel, of Exeter, an abhorrer, put an end to this practice. Having refused to obey the serjeant at arms, he stood on his defence, and said he knew of no law by which they pretended to commit him. The house, finding it equally dangerous to advance or recede, got off by an evasion. They inserted in their journal, that Stowel was indisposed, and that a month's time was allowed for the recovery of his health.

The chief violence of the house of commons appeared in all their transactions with regard to the popish plot, which they prosecuted with the same zeal and credulity as their predecessors. They endeavoured to bring in another exclusion bill, which differed in nothing from the former but in two articles, which were, that the bill was to be read in all the churches of the kingdom twice a year, and every one who should support the title of the Duke of York was rendered incapable of receiving a pardon but by an act of parliament. After violent debates on both sides, this bill was

rejected by a considerable majority, and the commons discovered much ill humour upon the disappointment. They voted, that whoever had advised his majesty to refuse the exclusion bill were promoters of popery, and enemies to the king and kingdom; and named the Marquis of Worcester, the Earls of Clarendon, Feversham, and Halifax, Laurence Hyde, and Edward Seymour, as those dangerous enemies, and requested his majesty to remove them from his councils for ever. They even refused to grant any supply until the exclusion bill were passed, and declared that whoever should hereafter lend, by way of advance, any money upon those branches of the king's revenue, arising from customs, excise, or hearth money, should be judged a hinderer of the sitting of parliament, and be responsible for the same in parliament. No hopes being left of pacifying the commons, the king secretly determined to dissolve them, which was accordingly done, but not before they had passed in a tumultuous manner some extraordinary resolutions indicative of their aversion to popery.

The king summoned his new parliament to meet at Oxford, on the twenty-first of March, 1681. He thought of obviating all inconveniences by such a distance from the scenes of former disputes, where the long parliament had received strength and encouragement from the

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vicinity of a powerful city, which had embraced their cause. And the city of London proved how just was the judgment which had been formed of its dispositions. They not only re-elected their members, but voted them their thanks for their former conduct. The violence of party was predominant in this assembly, and it had more the appearance of a tumultuous Polish diet than a regular English parliament. The king gladly seized hold of an opportunity afforded by a quarrel between the two houses, and proceeded to the dissolution of the parliament.

In this reign an important project was formed to give the king uncontrolled influence in all the corporations of England, and thereby give the greatest wound to the legal constitution which had ever yet been inflicted. They commenced with London, and a writ of *quo warranto* was issued against the city, that is, an inquiry into the validity of its charter. It was pretended that the city had forfeited all its privileges, and ought to be declared no longer a corporation, on account of two faults committed by the aldermen and common council. All the corporations in England, having the example of London before them, saw how vain it would be to contend with the court, and were most of them induced to surrender their charters into the hands of the king. Considerable sums were



exacted for restoring them, and all offices of power and profit were left at the disposal of the crown. CHAP.  
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The long parliament has been stigmatized by many writers as *pensionary*, which name has even been annexed to it. This epithet may more properly be given to some of their successors, who have scarce the merit of one negative on a ministerial question; or one affirmative in compliance with the voice of their country. The long parliament, however, was not accused of corruption without reason, and a test against receiving any money, grant, or pension, or the promise of any place to be taken by each member was entered on the journal, as a wholesome expedient to preserve the innocent, and reflect double infamy on the guilty. There is a list of twenty-seven pensioners by name, together with their allowances. Apostate patriots were to be bought off, when the king's debts were to be burdened on the people, and large sums, besides offices, lands, and reversions, were bestowed on those who courted their own interest more than the welfare of their country.

There were sent members from the following places during this reign.

Durham county

Durham city . . . . . Durham county.

Newark . . . . . Nottingham county.



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Created in all, six.—Restored none.—Omitted none.

This was the last alteration made in the representative system, except in the right of voting, which has been limited in most of the cities boroughs, and cinque ports in every reign for the last two hundred years.

Notwithstanding the attempt made in the reign of Charles the Second to exclude the Duke of York from the throne, he now took possession of it, if not with the unanimous consent of the people, at least without any apparent opposition. The tories were his friends, and the whigs were become so unpopular, on account of the share they had in the Rye-house plot, that little regard was paid to their sentiments. It soon appeared, however, that the opinion they had formed of the arbitrary principles of James was but too well founded. For though he declared to the first privy council he assembled, his firm intention of maintaining the constitution, he yet issued his proclamation for levying the duties of the customs and excise, without the consent of parliament. By which means he not only invaded the privileges of that body, but violated in the most open manner the established laws of the land.

The continued tide of prosperity which flowed on James from the commencement of his reign, so elated him, that he began to undervalue the



English parliament, formidable as it had ever been to his family. He thought he might proceed with impunity to the accomplishment of the two grand objects he had ever in view; the introduction of the popish religion, and the creation of an arbitrary government. In the prosecution of this plan, he suspended the test act, which was considered as the barrier against popery, and the chief security of the constitution. The parliament alarmed at the dispensing power assumed by the king, presented an address against it. To invade at once their constitution, to threaten their religion, to establish a standing army, and even to require them by their concurrence to contribute to these measures, were such acts of tyranny, as to exceed the bounds of their patience. They began for the first time to display some small remains of English spirit and generosity. James was so incensed at their petition that he immediately dissolved them.

Among all the engines of authority formerly employed by the crown, none had been more destructive to liberty than the court of high commissions, which with the star-chamber had been abolished in the reign of Charles the First, by act of parliament. A clause was also inserted, prohibiting the erection in all future times of that court or any of like nature. But this was deemed no obstacle by James. An ecclesiastical commission, with the same inquisitorial powers



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possessed by the former court, was issued. Seven commissioners were vested with full and unlimited authority over the church of England. They might proceed on bare suspicion ; and the better to set the laws at defiance, it was expressly inserted in the patent, that they were to exercise their jurisdiction, notwithstanding any law or statute to the contrary. Before the people had time to reflect on any instance of this king's tyranny, their attention was suddenly attracted by another. He thought proper to issue a proclamation suspending all the penal laws in ecclesiastical matters, and granting a general liberty of conscience to all his subjects. This indulgence was seemingly calculated for the benefit of dissenters of every denomination, but it was evidently intended in favor of the papists. It was a strain of authority inconsistent with law and a limited constitution.

The continued oppressions and despotic principles of the king, and the numerous dangers which threatened the country, alarmed the great body of the people, and schemes were formed for soliciting foreign aid. The person they applied to was the Prince of Orange, as the best qualified to assist them. Nor did he turn a deaf ear to their applications, but instantly began to make preparations for complying with the request of the English protestants. A coalition of all parties even took place,



faction was for a time laid asleep, and forgetting their animosities secretly concurred in promoting the intended revolution. CHAP.  
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On the arrival of the prince in England, his first step was to publish a declaration, in which he enumerated all the instances of the mal-administration of the government, and added, that he had come to England at the request of great numbers of the nobility and gentry to redress all grievances, and to have the rights of the subject distinctly ascertained in a free parliament. The fate of James the Second will serve as a warning to all English monarchs, never to aspire at more power than is allowed by law, as attempts of this nature can have no other effect than eventually to bring on their own ruin.

In the dissolution of government which ensued on the retreat of James from the kingdom, the peers, as being possessed of hereditary jurisdiction, resolved to act as the guardians of the public. Accordingly they presented a petition to the Prince of Orange, desiring him to summon a convention by circular letters. And to assume in the mean time, the direction of public affairs. The prince was desirous of obtaining a more full and explicit declaration of the consent of the nation; and a judicious expedient was employed for that purpose. All the members who had sat in the house of commons during any parliament of Charles the Second, the only



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parliaments whose electors were regarded as free, were invited to meet, and to them the mayor, aldermen, and fifty of the common council of London were joined. This was considered as the most proper representation of the people, which could be summoned during the present emergency. They unanimously voted the same address as the lords; and the prince, being thus supported by all the legal authority which could be obtained, wrote circular letters to all the counties and corporations in England, desiring them to return members for a convention which was appointed to assemble on the twenty-second of January, 1689.

The commons had no sooner met than they passed, by a considerable majority, the following memorable vote, “That King James the  
“Second having endeavoured to subvert the  
“constitution of the kingdom, by breaking the  
“original contract between the king and people,  
“and having, by the advice of the Jesuits and  
“other wicked persons, violated the fundamental  
“laws, and withdrawn himself out of the king-  
“dom, had *abdicated* the government, and that  
“the throne is thereby vacant.” The convention next proceeded to consider what kind of government they should now establish, and a bill was passed, by which they settled the crown on the Prince and Princess of Orange, the sole administration to remain in the prince.



But the convention were not so imprudent as to bestow the crown upon the Prince and Princess of Orange, without laying them under such restrictions as might effectually prevent their abusing the sovereign power in the same manner as their predecessor had done. They annexed to the settlement a declaration of rights, where all the points which had, of late years, been disputed between the king and people, were finally determined. The powers of royal prerogative were more narrowly circumscribed, and more exactly defined, than in any former period of the English government. And previous to the tender of the crown, this declaration of rights, which is usually called the bill of rights, was read to the Prince and Princess of Orange. Its principal articles were: That the king has no right to suspend or dispense with laws, or the execution of laws. That all ecclesiastical commission courts are illegal. That the levying money for the use of the crown by prerogative, without grant of parliament, is not warranted by law. That it is the right of the subjects to petition the king. That a standing army in time of peace, unless by consent of parliament, is against law. That protestant subjects may have arms for their defence. That the election of members of parliament ought to be free. That freedom of debate in parliament ought to be allowed. That excessive bail ought



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not to be required, nor excessive fines imposed, nor cruel punishments inflicted. That jurors ought to be duly impannelled, and upon trials for high treason ought to be freeholders. That all grants and premises of fines and forfeitures, before conviction, are illegal. And that for redress of grievances, frequent parliaments should be assembled.

Thus have we seen, through the whole course of four reigns, a continued struggle maintained between the crown and the people. Privilege and prerogative were ever at variance. The revolution forms a new epoch in the constitution, and was attended perhaps with consequences more advantageous to the people, than barely freeing them from an exceptionable administration, by deciding many important questions in favor of liberty, and still more by that great precedent of deposing one king, and establishing a new family, it gave such an ascendent to popular principles, as has put the nature of the English constitution beyond all controversy. And it may justly be affirmed, that this country has since enjoyed, if not the best system of government, at least the most entire system of liberty that was ever known among mankind.

It is matter of surprize that the convention, in their declaration of rights, should mention the necessity of frequent parliaments, without a single clause to provide that they should be



frequent, or indeed specifying what they meant CHAP.  
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by the term. No expedient was even proposed  
for the annual redress of grievances. They even  
winked at the infraction of the bill of rights, by  
the new king seizing certain suspected persons,  
at the same time complimenting him with a sus-  
pension of the habeas-corpus act, and thereby  
set a precedent, which has been brought forward  
in our own times, and may become instrumental  
to our ruin. To our representatives we intrust  
the care, but not the surrender, of our liberties ;  
nor can they make a compliment of that which  
is not in their power to bestow, to the ambition  
or necessities of any prince. Such conduct can  
not be warranted by any construction of reason,  
sense, or justice. Parliaments possess no more  
power to overturn the foundations than is vested  
in the prince. Those privileges which are de-  
rived from the king and parliament, upon ac-  
count of the subjects' temporary conveniences,  
are trusted to the review of the same court ;  
but those fundamental privileges which are the  
birthright of nations, and have their origin from  
the laws of nature itself, such as the freedom of  
our persons, and the protection of our property,  
fall only under the cognizance of parliaments,  
and are a bulwark against such breaches, as the  
depraved nature of princes, and their corrupt  
ministers, may attempt.

One of the chief advantages produced by the



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revolution, was the settlement of the revenue upon such a footing as to prevent its being embezzled by the king or his ministers. For it is to be observed, that before that period, the whole of the standing revenue of the state was entirely at the disposal of the prince. There was then no distinction between what was allotted for the support of the king's household, and what was assigned for the service of the public. By this means the king might reserve what he pleased for his own private use, and employ no more than he thought proper for the service of the nation. Accordingly it appears from the time of the restoration to that of the revolution, the public revenue had been constantly embezzled, and large sums had been frequently sunk, without being applied to the purposes for which they had been granted. In order to remedy this growing evil, it was wisely enacted at the revolution, that a separate income should be allowed for the maintenance of the king's household, and the support of his dignity, and that the manner of expending the remainder of the revenue should be entirely subjected to the command of the parliament.

<sup>2</sup> W. and  
M. 1, 7.

In the first session of the second parliament of William and Mary, an act was passed, declaring the right and freedom of election of members to serve in parliament for the cinque ports. The wardens of the cinque ports had



claimed a power of nominating one person whom they ought to elect. This act rendered void all such nomination or recommendation.

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As the chief excellence of our constitution consists in our being bound only by such laws to which we ourselves consent, and as such consent cannot be given by every individual in person, but must be by representation, it is therefore essential to the very being of parliament, that electors should be absolutely free and indifferent. Every person claiming a right to vote should be duly qualified, free from corruption, or any undue influence whatever.

Nothing more requires freedom and indifference, than this of members to serve for us in parliament; in whose hands are placed our estates, our liberties, and our lives. And therefore it

Mor.  
Whittel. on  
Governm.  
c. 42, fol.  
383.

is but reasonable, that those who are so much concerned in the determination of all persons who shall be elected, may have a free and indifferent choice of them. For these reasons, all undue influence upon electors are illegal, and strongly prohibited. Locke ranks it among

On Govern.  
part 2, sec.  
222.

those breaches of trust in the executive magistrate, which, according to his notions, amount to a dissolution of government, “if he employs  
“the force, treasure, and offices of the society  
“to corrupt the representatives, or openly to  
“pre-engage the electors, or prescribe what  
“manner of persons shall be chosen, for thus to



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“regulate candidates and electors, and new-  
 “model the ways of election, what is it, but to  
 “cut up the government by the root, and poison  
 “the very fountain of public security.”

The parliament had been too profuse in their concessions to King William, to retain the affections of the people. They were daily falling more and more into disrepute and contempt, on account of their implicit obedience to the demands of the king and his ministers: and were charged with selling their votes for places and pensions. They showed, however, some concern for their reputation, if they retained none for their integrity, by passing a bill for free and impartial proceedings in parliament. It was levelled against the officers of the army and navy, who had insinuated themselves into the house in great numbers, and was intended to disqualifying all members of parliament from enjoying places of trust and profit. And when the king, by ministerial management, was prevailed upon to refuse his assent to this bill, they resolved, that whoever had advised the king not to give the royal assent to the act touching free and impartial proceedings in parliament, which was to redress a grievance, and take off a scandal upon the proceedings of the commons in parliament, was an enemy to their majesties and the kingdom.

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 the use and  
 abuse of  
 Parl.

Finding the people could not yet be brought



to endure long parliaments, they endeavoured to make their peace with the public by the triennial bill, in which was a clause for their own dissolution. This was evidently the immediate object of the bill, as the parliament had sat for three sessions, and had begun to be formidable to the people from its concessions to the ministry. They set on foot an inquiry into their own venalities, which opened such a scene of iniquity, as in the comparison made the pensioner parliament of Charles the Second seem innocent, and which was then thought to have arrived at the very summit of corruption.

Influence, more or less, our kings will ever <sup>Ibid.</sup> have over parliament, nor was the influence diminished by the revolution. But under the awe of the triennial act, and the still glowing resentment of the people against their predecessors, the third parliament of King William did not entirely lose sight of their duty. They commenced with the popular bill for regulating " trials in cases of treason," in which many things were provided for the security of the subject against the malignity of ministerial power. The state of the coin which had become a national grievance, was also investigated, and such precautions taken, that in less than a year, the currency of England which had been the worst, became the best coin in Europe. And although there appears to have been so much



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complaisance for the king's pleasure as furnished matter for the gross reflections thrown on it, they rejected a bill for *restraining the press*, as rightly esteeming it to be one of the fundamental privileges of the subject.

If the third parliament of this reign did not wholly lose sight of their duty to their constituents, the fourth has been represented as blameable for adhering to it too closely. They disbanded the army as useless, and consequently an incumbrance in time of peace, nor did they spare the Dutch guards, who were become extremely obnoxious to the people. A stop was put to the issuing of bills of credit from the treasury, which had till then been a ministerial expedient to supply the deficiencies of money. They passed a bill, which was however rejected by the lords for "limiting the number of placements" in their own house, and closely inspected into the grants made by the crown.

These were the fruits of their first session, and in their second they annexed a bill of resumption to the land-tax bill. This offended the lords who were devoted to the court, and who endeavoured to clog the bill with amendments; but the commons insisted on their point with such firmness, that the king found it advisable to let them have their own way. But so great was the resentment which he had conceived against this intractable parliament, that



he first prorogued them by commission without a speech, and afterwards dissolved them, in the hope that the unexpected exertion of the prerogative would teach their successors more complaisance.

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The event did not answer the expectation. Instead of weak, tame concessions to the throne, the majority of the new parliament were accused of the contrary extreme. But to this very parliament we are indebted for setting bounds to that increasing and dangerous evil, parliamentary privilege; the laudable precedent of a proper commission to take and settle the public accounts, and many wholesome laws, which were calculated for the more immediate service both of prince and people. Their merits, however, could not reconcile them to an offended ministry: and, notwithstanding an implied promise in the king's speech to meet them again in the ensuing winter, they were suddenly dissolved, as a second warning to refractory parliaments.

But this second warning was as ineffectual as the first. The people continued firm to those members who had not violated their confidence; and, notwithstanding the utmost exertions of the ministerial adherents, returned a majority of the very men who had been so lately dismissed. It must, however, be confessed, that they occasionally suffered their zeal for their own house to carry them rather too great lengths, as appears



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by their resolutions relative to their privileges, which are irreconcilable with the rights of their constituents.

It was in this reign that the funding system had its origin ; that is, of borrowing money on the faith of parliament, or upon the credit of those taxes which the government imposes, in order to pay the interest: a practice which has since been carried to a greater extent than, at its introduction, could have been conceived possible, and exceeds the ability of any calculator to foretell to what farther height it may be carried. This system appears to have given rise to the Bank of England, which was established in 1693, as also to the practice of private banking: before this time, all money transactions were managed by the goldsmiths.

Smollet's  
Contin.

In order to involve this country in foreign connections, which, in all probability, will eventually be productive of its ruin, William scrupled not to employ all the engines of corruption, by which the morals of the nation were totally debauched. He procured a parliamentary sanction for a standing army, which now seems to be interwoven in our constitution. The introduction of the practice of borrowing money upon remote funds is pernicious, as it encourages a nest of speculators, who prey upon the vitals of their country, when the nation has entailed a debt continually increasing, and a



system of politics replete with misery, despair, and destruction. CHAP.  
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Queen Anne, while Princess of Denmark, having been ill-used upon all occasions, by the whigs, no sooner took possession of the throne, than she made a complete change at court. A tory administration did not fail to produce a tory parliament, which, however, did no so far debase itself as to gratify every ministerial demand. They had also the merit of making a close inspection into the public accounts, and to lay before the queen a very ample remonstrance on the subject, at once exposing past miscarriages, and shewing the necessity for a more exact economy in future. Smollet's  
Contin.  
Ralph's  
Use and  
Abuse of  
Parl.  
Macaulay.

During this parliament alone, no less than four disputes had taken place between the two houses, which were carried on with great warmth, and divided the whole nation. The whigs sided with the lords, and the tories with the commons. The last were for multiplying restraints on the people they represented, and the first found their account in acting as the advocates and guardians of national liberty. But these broils between the two houses had, in reality, different grounds from those which were publicly pretended. The court had no sooner sided with the whigs, and turned its back on the tories, than the elections took a different



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the same line of conduct. It would occupy too much space to state the inconsistencies of either party, but merely observe, that a tory motion in the house of lords to invite over the Princess Sophia as presumptive heiress to the crown, which was over-ruled by the whigs out of compliment to the queen, made way for an act, by which two of the most important clauses in the Act of Limitation were repealed; namely, that of obliging privy councillors to sign their opinions, and of incapacitating placemen from sitting in the house of commons. As the instrument by which the crown had been entailed was of the nature of Magna Charta, it consequently ought in every circumstance to have been, like it, irrepealable. It was evident that those clauses contained the only security which the people could ever rationally hope to obtain against the progress of corruption and the impunity of a criminal administration. The only advantage resulting to the people from the Act of Settlement was at once surrendered, to bespeak the indulgence of the future sovereign, and bestow a seasonable compliment to the present.

This harmony between the ministry and the parliament did not long subsist. On the contrary, the whigs not having been gratified to the extent of their expectations for their late ser-



vices, spirited up the city of London to lay a remonstrance before the parliament, enumerating the losses at sea, complaining of the conduct of the admiralty, &c., which gave rise to warm debates in both houses. They likewise agreed with the tories in their address relative to the war with Spain; but it soon became evident that these steps were taken only to distress the ministers, not to serve the nation. Their terms were no sooner complied with, but they deserted the tories again, and voted thanks for the care which had been taken of the Spanish service. At last they were dissolved without having the merit of one independent measure to plead in recommendation to their constituents, except rejecting an arbitrary project for recruiting the army, on which they did not dare to insist, lest they should endanger their own election for the next parliament.

Still the misunderstandings between the administration and their allies, the whigs, were not entirely removed. On the contrary, the latter, imagining they had now an opportunity of acting for themselves, joined interests, however unnatural, with the friends of the Stewarts, particularly in the north, and hoped by their assistance to have a clear majority in the ensuing parliament. But so effectually did the ministry labour on this occasion, that on the return of the writs, it appeared they were still able to



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stand their ground, and carry their principal points in spite of all opposition. Upon which the whigs, with more policy than honesty, made their submission, at the expence of their jacobite friends, and were again admitted into favour. As it is apparent from many flagrant circumstances, particularly their decisions regarding controverted elections, which were managed in such a manner, as to shew that they rather chose themselves than that they were chosen by the people; that the house of commons was more in the interest of the ministers, than that of their sovereign and their country, there is little room to be surprised that they were dissolved at the close of the second session. This was to be understood to have been effected at the instance of the people: many corporations having been induced to petition for the dissolution; and a *new* administration undertook to return representatives more devoted at least to the person of her majesty, if not to the interests of their country.

This new election, however, furnishes new proof of the power and influence of the crown over the representative. When the ministry was in alliance with the whigs, the majority of both houses was *whig*; when with the tories, they became tory. Never were the two factions which divided the nation in so great a ferment as at this period. Though the whigs were



routed at court, they were strong in the city. They had so great an influence over the main spring of government, the ways and means, and made so resolute a stand in the house of peers, that the new ministers did not think it for their interest to inquire into the conduct of their predecessors, or render their enemies desperate by throwing them *all* out of place and power at once.

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But though the tories had the ascendant, they acted, in many instances, as the whigs had done before them. For though they recommended a tender care of the Hanover succession to the throne, seemed earnest for carrying on the war at that time waging with France with as much vigour as ever, made inquiry into the abuses of the victualling office, provided for the security and discharge of the public debts, addressed for an account of the pensions paid by the crown, and passed a *place* bill, which was, however, rejected by the lords; the bill to prevent bribery in elections fell to the ground upon the third reading. They approved a report which charged the late ministers with a deficiency of upwards of thirty-five millions, when in fact they were only accountable for four; rejected a court motion for a duty upon *leather* as a *grievance*, and yet adopted the very same thing under a new title, a *duty* upon *hides*, and, in short, discovered such a general disposition to oblige the ministry, that



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the last business of the session was to issue out writs to supply the vacancies made by those who had accepted such places of trust and profit in reward of their services, as rendered them necessary to be re-chosen. And it ought to be observed, that when the whigs repealed the clause in the Act of Limitation relative to placemen in the house of commons, they endeavoured to qualify what they had done, by excepting totally certain officers of the revenue, and rendering it necessary for most others to pass a fine to their constituents on their being promoted. In other words, by obliging them to be at the charge of a new election.

These were their proceedings on their first sitting. In the second, though they granted a supply for the war, they seemed to be making the necessary arrangements for a peace, which it was the interest of one party to bring about, and the other to perplex and expose. Hence the whole current of public business partook of the soil of that faction through the canal of which it passed, and the stream was seldom sufficiently clear for the people to see to the bottom. The whigs connived at the passing the *occasional conformity bill*, which they had formerly endeavoured to defeat, as striking at the very root of religious liberty. The tories, on their side, ordered a bill for *restraining the license*, or, more properly, *the liberty of the press*,



equally subversive of the rights and privileges of the people. Though the honor of the sovereign and the welfare of the people were subjects frequently dwelt on, neither party had any one good principle in view. Their own interests were predominant. All was faction, craft, and treachery. Party spirit had almost dissolved society, and truth was swallowed up in the unfathomable gulph of controversy.

The third session of the parliament was similar to the other two. Though it was not suffered to sit for the dispatch of business for a considerable time, and had been prorogued no less than five times in the space of one month, no notice was taken of the extraordinary proceeding, and every point dictated by the court was admitted without the least difficulty. But, however mischievous the factions of these times were to the public, so infatuated were the people by the artifices of their leaders, or were themselves so thoroughly corrupt, that at the next general election they returned such representatives as were scarce distinguished from the former.

In the house of lords the whigs raised a great outcry against a tory pamphlet written by Swift, and in the house of commons the tories did the same by certain whiggish ones written by Steel, who being a member was made the scape-goat of his party, and was expelled. As usual, good motions were made for factious *ends* by one



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party, and overruled by the other, to fulfil their engagements with the ministry. The Hanover succession was made the grand engine by the whigs, and the schism bill by the tories, but with different success. For the first was voted out of danger, and the last was carried into a law, although a most apparent violation of the liberty of the subject. In a word, the whole kingdom was embroiled; and even the queen herself was so tormented with the feuds and animosities of her own servants, that she had reason to welcome death as a deliverer, and felt more joy at laying down her sceptre, than her successor received by its acquisition.

It was in this reign that the union between England and Scotland took place, the measure said to be necessary for the mutual safety of both nations. The Scots were, however, more inclined to a federal union, but the English were bent upon an incorporation, so that no Scottish parliament should have power to repeal the articles of the treaty. The substance of the treaty of union, though eagerly courted by the English ministry, proved very unpalatable to the generality of the Scottish nation.

With the life of the queen ended the power of an infamous ministry, which had not only sacrificed the interest of Great Britain to its enemies, but prostituted the honor and dignity of the crown to serve the most vile purposes.



The parliament it had bribed to give a sanction to these measures was consequently dissolved, and a new one summoned. The whigs and tories exerted their utmost efforts to influence the elections, but the former gained the superiority. On the appearance of his majesty, affairs put on a new face, and liberty was rescued from the dark and insidious designs of wicked and ambitious men. A new privy council was formed, and out of it a cabinet was chosen of those who had distinguished themselves in opposition to the late measures.

The first address of the commons to George the First was a declaration of hostilities against the party last in power; and thereby provided, very effectually, to set the new king at variance with half of his subjects, and consequently rendered him dependent on one faction, and obnoxious to the other. The lords, whom they either feared or hated, they next impeached of high treason; a mode of procedure in which it is difficult to discover upon what constitutional grounds the impeachments could be voted, or how the charges they contained could amount to so great a crime.

The Riot Act, which passed in the first session, was, no doubt, necessary, from the circumstances of the times; but it ought either to have been temporary, or should have been long since repealed; for while that yoke is round



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our necks, though we are at liberty to preach resistance, we have little or no power to practise it, under whatever grievances we may labor, or by whatever provocations compelled.

The first session of this parliament closed on the twenty-first of September, 1715, but the kingdom being then in arms, it was held advisable to adjourn, instead of proroguing; to which precedent it was afterwards found convenient to resort for five successive times. By this measure two sessions were run into one. But, however dangerous the precedent, it was not complained of at that time, lest dissatisfaction might be construed into disaffection.

On the ninth of January, 1716, both houses met for the dispatch of business, and commenced their operations with impeachments against those lords who had been taken in the rebellion; who, pleading guilty, had sentence of death passed upon them. In order that the commons might not be teased by petitions in their favor, they adjourned themselves, having first passed the suspension of the Habeas Corpus Act. But this was not done without opposition; and experience has too frequently evinced how dangerous it has been to leave the *liberty* of the *subject* at the discretion of the government. They likewise passed the Land Tax Bill of four shillings in the pound, which was opened with so extraordinary a preamble as



offended the upper house. The peers asserted that the commons pre-judged matters of a high and important nature, the cognizance and determination of which were peculiarly their province.

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The ministry, probably resenting the general discontent and disaffection of the people to a government which hid from its own eyes the desire of vengeance, by which it was actuated, under the veil of patriotism and loyalty, now found, or imagined, the necessity of adopting a measure for the preservation of public safety, which has ever been considered as the highest and most unconstitutional exertion of parliamentary authority attempted since the æra of the revolution. And if we except the act of Henry the Eighth, declaring the proclamations of the crown equal in validity to acts of parliament, and the Perpetuity Act of Charles the First, it may not be too much to affirm, since the first existence of parliaments.

This was no other than the introduction of the *Septennial Bill* in this session, by which parliament not only assumed a power of prolonging the duration of future parliaments, but even its own; and being elected by the nation for three years, they continued themselves for four years longer. The right of electing representatives in parliament is inviolately inherent in the people, and can never be thought to be



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delegated to the representatives, unless the elected becomes the elector, and at the same time supposing it to be the will of the people that their representatives should have it in their power to destroy those who made them, whenever a ministry shall think it necessary to screen themselves from their just resentment. This, as a member of those days contended, would be to destroy the fence of all their freedom; for if we have a right to continue ourselves one year, month, or day, beyond our triennial term, it will unavoidably follow, we have it in our power to make ourselves perpetual: to say that the passing this bill is not to grasp to ourselves the right of election, but only to enlarge the time of calling new parliaments, is a manifest fallacy; for, whenever our three years are expired, we can no longer be said to exist by the *choice* of the people, but by *our own appointments*. The bill, which originated in the house of peers, and was brought in by the Duke of Devonshire, was opposed with great energy by several noblemen. A long parliament, it was affirmed, would encourage every species of corruption in every class of the community; that the value of a seat would bear a determinate proportion to the legal duration of parliaments, and the purchase would rise accordingly; that a long parliament would both enhance the temptations, and multiply the opportunities, of



a vicious ministry, to undermine the integrity and independency of parliaments, far beyond what could occur if they were short and frequent; that the reasons urged for prolonging the duration of the parliament to seven years would be probably as strong, and, by perseverance in the same impolitic conduct, might be made stronger before that term, for continuing, and even perpetuating, their legislative power.

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The bill, when transmitted to the commons, had still to encounter greater opposition. It was justly observed by Mr. Shippen, that the manner in which the bill was introduced, was, in itself, a sufficient reason for its rejection. It was sent from the lords, and as it related merely to themselves, he apprehended it to be inconsistent with their honor to receive it. Their predecessors had shewn a determination to resist all attempts to innovate on their privileges, and shall this glorious house of commons submit to model themselves at the pleasure of the lords, he could not discover by what rule of reason or law, they, who were only representatives, could enlarge, to their own advantage, the authority delegated to them; or, that by virtue of such delegated authority, they could destroy the fundamental rights of their constitution. The house possesses no legislative right but what it derives from the people. Their trust is, therefore, a triennial one, and if it is extended beyond



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the strict legal duration, they cease, from that moment, to be the trustees of the people, and become their own electors. From that instant they would assume an unwarrantable stretch of power, and take upon themselves to create a new constitution. Though it is a received maxim in civil science, that the supreme legislature cannot be bound, yet, an exception is necessarily implied, that it is restrained from subverting the foundation on which it stands. The Triennial Act, which restored the freedom and frequency of parliaments, was a concession made to the people by King William, in the midst of his difficulties. A standing parliament, which this bill went to establish, has been said to resemble a standing pool, the waters of which grow, for want of a fresh and free current, offensive and fetid; but the present parliament may be more justly compared to a torrent, which, in its furious and foaming course, desolates the land, bearing down all the landmarks and ancient mounds which have been raised to confine it within its regular and accustomed banks.

Not septennial, but annual, parliaments are derived from our ancient constitution, and every departure from its principles has been attended with inconvenience and injury. As one of the objects of this bill was to prevent animosities and divisions attending frequent



elections, and which are chiefly of a private nature, and little affect the public, this bill has been found more calculated to inflame than to extinguish them. It is calculated, not to strengthen the hands of the executive powers, but to lessen its influence with foreign nations. Frequent parliaments are co-eval with the constitution. In the reign of Edward the Third, it was enacted that parliaments should be holden every year once, and oftener if need be. This must be understood of new parliaments, for prorogations and adjournments were then unknown. Every long interruption of parliament has been attended with mischief and inconvenience to the people. In the Declaration of Rights, at the Revolution, it is asserted, as the undoubted right of the subject, that parliaments should be held frequently; and the preamble of the bill declares, "That by the ancient laws  
" and statutes of the realm frequent parliaments  
" ought to be held, and that frequent NEW  
" parliaments tend very much to the happy  
" union, and the good agreement, of the king  
" and his people." To establish the sovereign in the hearts of his subjects, this is the most sure and effectual way. Such frequent appeals to the people generate confidence, and confidence is a great advance towards agreement and affection. But long parliaments are a violation of the liberty of the people. They engender dis-



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trust between the prince and his subjects, who are thereby deprived of the only remedy which they have against those who either do not understand, or through corruption wilfully betray the sacred trust reposed in them. And this remedy is, to choose better men in their places. The fate of this bill was pre-determined, and passed by a majority of 264 against 121, although the whole body of the people had a right to protest against it, in behalf of themselves and their posterity.

It is not our intention to enter into all the different circumstances which occurred in parliament either relative to the internal economy of the kingdom, or the subsidies given to, or treaties made with, foreign powers; but only to detail whatever has accrued touching the people, and their immediate connection with parliament. It is, however, necessary to mention, that in this reign was established the sinking fund, introduced by Mr. Walpole. This memorable bill enacted that all the public funds redeemable by law, and bearing higher interest than five per cent. be redeemed according to their respective provisos or clauses of redemption; or, with consent of the proprietors, be converted into an interest or annuity not exceeding five per cent. per annum, redeemable by parliament. And, by this bill, the joint surplusses arising, as well from the proposed



reduction of interest from six to five per cent., as from the excesses of the several taxes appropriated to the payment of the interest, were solemnly declared to be solely and unalienably applicable, under the denomination of a Sinking Fund, to the discharge of the principal of the public debt contracted previous to the 25th of December in the preceding year, 1716. Had this plan been as steadily pursued as it was wisely concerted, the nation would have been soon relieved from its pecuniary difficulties. For, as in consequence of the progressive redemption of the debt, the surplusses must increase with accelerated rapidity, its internal energy, without attention to the regular though complex mode of its operation, is wholly inconceivable.

The repeal of the most rigorous clauses of the *Occasional Conformity* and *Schism Bills*, took place in 1718; which, although it met with violent opposition, had its foundation in equity, removed an oppression, and consequently became properly the duty of parliament. Another bill was brought into the lords for limiting the number of peers to six beyond their present number. This was considered as a measure of resentment on the part of the crown against the Prince of Wales, and to diminish his political importance, for the countenance and support he had given to the opposition. Although the



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bill passed the lords, it was thrown out by the commons, not without evident marks of indignation.

About the year 1720, the famous South Sea Bill was introduced into the British house of commons by Mr. Aislalie, chancellor of the exchequer, and the Earl of Sunderland presiding at the board of treasury. The house was fascinated by the dazzling and magnificent appearance of the project, and the bill passed with general applause. The South Sea Company and the Bank of England formed plans for reducing all the public funds into one, in order to discharge the national debt. In vain did the sagacity of Walpole discern, and his eloquence display, the mighty mischief contained in this casket of Pandora. Such was the general infatuation that the whole nation, in a manner, became adventurers, but soon awaking from their golden dreams of prosperity, found themselves reduced to misery and despair. On a parliamentary investigation of this dark and dangerous business, which was stiled in the report of the secret committee, "a train of the deepest villainy and fraud hell ever contrived for the ruin of any nation," it appeared that transfers of the company's stock, to a very great amount, had been made to persons high in office to facilitate the passing of the bill. And that the scandalous artifices practised by the company, and their



shameless abuse of the public confidence, had received, not only the connivance, but the encouragement of the ministers. Lord Sunderland and Mr. Aislachie were compelled to a precipitate and disgraceful resignation of their offices, and the latter being also expelled the house was committed to the Tower. Many persons of rank and consequence, found more or less criminal, were variously punished, although not with a degree of severity adequate to the enormity of their offence.

The first septennial parliament was dissolved in March, 1722, and in October following the new parliament met, when his majesty acquainted them of a new scheme having been formed against his person and government, in favor of the pretender. On which the Habeas Corpus Act was suspended, contrary to all precedent, for twelve months. The Duke of Norfolk, the Earl of Orrery, Lord North, and Doctor Atterbury, Bishop of Rochester, were committed to the Tower for high treason. The bishop was adjudged guilty of being concerned in a plot to bring over a foreign power to invade these kingdoms: and, therefore, a bill was brought in to deprive him of his episcopal dignity, and sentence him to perpetual banishment. The proofs in support of the charge against the Bishop of Rochester were deficient in legal precision, though sufficient to establish his guilt, and much



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clamor was excited by the bill of banishment passed against him. The penalties were either much greater or much less than he deserved, and whatever was the nature or extent of the accusation against him, the law of the land, and the established forms of judicial procedure, ought to have been strictly adhered to. The executive justice of the state ought not to depart from that *substantial equity* which is founded on the nature of things.

One of the most grievous and oppressive taxes ever laid on by the hand of power was passed in this parliament on the catholics. The bill introduced and supported by the minister went to levy one hundred thousand pounds on all their estates, upon the shallow pretext of “the constant endeavours of the papists to subvert the present happy establishment.” He would not charge any particular person, but said generally many of them had engaged in the rebellion. An unjust suspicion, tending to inflict severities on numerous innocent families who harboured no political designs, and who lived under the faith and sanction of a free government. It was a persecution, odious in itself; incompatible with the honor of the legislature; and destructive of the freedom and happiness of the subject. King William, though warned of the dangers of his situation, resolutely and constantly refused compliance, although frequently urged, to carry



into execution the severity of the laws enacted against the Roman catholics. He well knew that no free state could long subsist in a departure from the rules of equal and impartial justice. It has been said, that the liberties of England can never be in danger but from the Roman catholics; the truth is, the chief danger arises from the divisions and feuds subsisting between the various denominations of protestants in this country; animosities arising from an erroneous and contracted policy, and perpetuated by artful and ambitious leaders, for their own purposes, by exciting unnecessary fears, and groundless jealousies.

During the session, the Earl of Macclesfield, lord high chancellor, was impeached by the house of commons for high crimes and misdemeanours, upon the ground of having made unusual and exorbitant profits from the sale of places, and from the abuse of his trust as the general guardian of the person and estates of orphans and lunatics. After a trial of twenty days he was convicted by his peers, sentenced to pay a fine of £.30,000, and to imprisonment in the Tower until that sum was paid. A memorable example of the upright and impartial administration of criminal justice, worthy the imitation of subsequent times.

On the twentieth of January, 1727, the parliament met after its prorogation, when the



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most material business was a motion made by Mr. William Pulteney for appointing the committee to state the national debt, which had increased to an alarming degree. As it was a popular subject, it excited great debate, but the motion was rejected by a considerable majority. The treaty with Hanover then occupied the attention of the house. The tories in general insisted that the treaty would involve Great Britain in a war merely to support his majesty's dominions, contrary to the act of settlement. To which the whigs replied, that the true meaning of that act was, not to deprive Hanover totally of all assistance from the British nation, but only to restrain the sovereign from engaging in a war to support his foreign dominions without the consent of his parliament, whose business it was to decide whether such war was necessary or not. On the 15th of May the parliament was prorogued, and his majesty departed this life on the eleventh of June following.

The late violent debates marked a decided opposition to all the measures proposed by the ministers, which did not terminate on the decease of the king. George the Second had seen so much of the iniquitous and faithless conduct of the tories, that he justly dreaded to intrust them with any share of power: and for this was their greatest struggle. Of the tories, Mr. Wil-



liam Pulteney was the ostensible leader, while Sir Robert Walpole arranged himself at the head of the whigs. Immediately upon the accession of his majesty, the parliament met, to present addresses of condolence and congratulation, and were soon after dissolved. A new parliament was then called, which met on the twenty-third of January, 1728. The debates this session were chiefly upon the army, and granting sums for its maintenance; the true meaning of which was, only to try the strength of each party, in order that they might conduct their other proceedings accordingly.

An excellent bill was brought in, and passed into a law, for the better regulation of juries. Before this time, no provision was made to oblige men of substance to serve as jurymen, for which reason it was common for men of property to shift that office from themselves upon indigent people, which opened an easy way for corruption in most capital cases. By this act all such inconvenience was remedied.

In this parliament was passed the statute against bribery and corruption in the election of members, which took its rise in the house of commons, and was sent back by the lords, with some amendments to enforce that wholesome and necessary law, not only by enhancing the penalty from fifty to five hundred pounds, but by other excellent provisions. This statute



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enacts that such votes shall be deemed legal which shall have been so declared by the last determination of the house of commons, and which last determination shall be final. And if any person who claims a right to vote in any election, shall, after the 24th day of June, 1729, ask, receive, or take any money or other reward by way of gift, loan, or other devise, or agree or contract for any money, gift, office, employment, or other reward whatsoever, to give his vote, or to refuse or forbear to give his vote in any such election, or if any person by himself, or any person employed by him, doth, or shall, by any gift or reward, or by any promise, agreement, or security for any gift or reward, corrupt or procure any person or persons to give his or their vote or votes in any such election, shall, for every such offence, forfeit the sum of five hundred pounds, and shall be for ever disabled to vote in any election, and to hold or exercise any office or franchise, &c.

However ineffectual this bill has proved to answer the laudable ends proposed, those in power thought their freeholds invaded by its operation, and therefore raised a warm opposition to those amendments of the lords, as tending to encroach on the rights and privileges of the commons, in hope that, rather than any misunderstanding should be created between the two houses, the bill would be dropped. But



their artifice was ineffectual; and, in spite of their attempts, this salutary bill was passed into a law, the amendments having been agreed to by ninety-one voices against eighty-nine. CHAP.  
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About this time a judicious bill was introduced for preventing the delays of justice occasioned by the use of the Latin language in law proceedings, and enacting that all pleadings should be in the English tongue. There were not wanting those who cherished old prejudices, and who declared against the alterations of established forms and methods. However, there can be no question but that the alteration was useful and necessary, and certainly calculated to produce every advantage.

On the twenty-first of January, 1731, the parliament met after its prorogation, when the pension bill was revived. It had before passed the commons, but was rejected by the lords. It went to disable all persons from sitting in parliament who enjoyed any place under, or received any pension from, the crown. The lords again threw it out. A parliament absolutely independent of the crown, would, in a short time, infallibly reduce the crown to a state of dependence on itself. It is not by the perpetual conflicts of authority, but by the reciprocal dependence of the different branches of government that the balance of the constitution, and the harmony of its movements, are most effectually



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preserved. A total annihilation of that influence, the dangerous and prodigious preponderance of which this bill was wisely calculated to check, would be attended with a train of political evils. On the other hand, we have seen how frequently the rights and liberties of the subject have been sported with through that corrupt influence, secured by the treasure of the people, and placed in the hands of men who scruple at no unconstitutional measure to serve their own purposes, however base.

The prosperity of a nation is most effectually advanced by the encouragement of manufactures and commerce. This Sir Robert Walpole fully comprehended and encouraged. He had already abrogated a multiplicity of duties on the importation of raw materials and the exportation of manufactures. He had formed a project for effecting a radical change in the national system of taxation. The principal branches of the revenue at that time might be divided into port duties or customs, duties of excise, and taxes levied on immovable property, such as duties on land, houses, hearths, and windows. This latter description the minister considered as partial and oppressive. He thought to convert the greater part of the customs into duties of excise would be equally advantageous to the government and to the fair trader, and that the laws of excise might be so improved, as not to



give just grounds of complaint. In order to promote an essential change in the first species of taxation, and a total annihilation of the latter, he brought into the house, in the month of February, 1732, a bill for the revival of the salt duties which had been repealed some years preceding, as a substitute for one shilling in the pound land-tax: and if the house approved the measure, he signified his intention, the land-tax being at this time two shillings in the pound, to abolish that tax in the ensuing session, in which he declared he would rejoice, as annihilating of a grievous and intolerable burden. After many violent debates, the bill passed by a great majority. And here it must be acknowledged, that the opposition to Sir Robert Walpole's administration was so invariable, and frequently so intemperate, that the spirit of faction made repeated incursions on the line of patriotism.

A bill, important in itself, as being the first instance in which an actual and express taxation of America was attempted by the British parliament, was revived in 1733. It had in the preceding session passed the commons, though thrown out by the house of lords. The object of this bill was to destroy the commercial intercourse, which, since the treaty of Utrecht, had been carried on between the northern colonies of America and the French West India islands,



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which, for the productions of New England, made large returns of their commodities to the prejudice of the British West Indies. The Americans did not then entertain any idea that this bill, which at length passed into an act, would in after times be brought forward as a precedent for a regular and permanent system of taxation, nor did they discover any alarm, but that of a nature merely commercial, at a measure at once so dangerous and unconstitutional.

The opposition to the standing army was again revived, but this unconstitutional measure continued to be adopted. An open and direct attack was now, for the first time, made on the sinking fund, and produced a most animated and indignant remonstrance. In deliberating on the supplies for the ensuing year, Sir Robert Walpole moved that 500,000*l.* should be issued out of the sinking fund for current services. A minister in time of war, and in a case of exigency, might offer violence to this fund with some degree of impunity, but in time of peace, that sacred deposit for liquidating the debts, and abolishing the taxes, which lay so heavy on the trade and the people of this nation, ought ever to remain inviolate. Indeed, on no consideration whatever ought that fund to be perverted from any other use than that for which it was originally designed. No impression could be



made on the predetermined purpose of the minister ; and the measure, shameful as it was, received the sanction of the house; and, though it met with opposition in the house of lords, it passed, and received the royal assent.

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The minister was now encouraged to bring forward, in pursuance of his plan of revenue reform, his bill for subjecting the duties on wine and tobacco to the laws of excise. To his surprise, on his moving his first resolution, “ that the duties on tobacco do, from the 24th “ of June, 1733, cease and determine,” the majority was against it: although we have seen in our time the same bill carried into effect, without exciting public sensation, or even attracting any uncommon share of attention, much clamour was excited against it, and serious consequences were apprehended. Those who concurred with the minister, were for persevering in the measure, but Sir Robert Walpole declared, “ that, in the present inflamed temper of the “ people, the act could not be carried into execution without an armed force, and he would “ not be the minister to enforce any system of “ taxation at the expense of blood ; for if supplies are to be raised by the sword, there is an “ end of British liberty.”

The unfortunate pension bill, passed for the fourth time in four successive years by the commons, was for the fourth time thrown out



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by the peers. As this was a measure which solely regarded the purity and integrity of national representation, these repeated rejections appeared particularly invidious on the part of the lords. On the eleventh of June, 1733, the session closed.

That of 1734 was distinguished by a very vigorous, though ineffectual attempt to repeal the Septennial Act, as a flagrant encroachment upon the rights of the people, having a dangerous tendency to increase the influence of the crown, and being actually productive of the most baneful effects. A bill "for securing the freedom of parliament, by limiting the number of officers, civil and military, in the house of commons," was again revived. This important bill had at various times been proposed and rejected. The motion was a popular one, and, although it was negatived by a slender majority, received additional weight from the near approach of a dissolution of parliament.

A prorogation being now daily expected, a message from the king was delivered to the house, desiring that his majesty might be enabled during the recess, or interval of parliament, to make good such engagements with foreign powers as he might be called upon to fulfil or contract, and such augmentation of his land and sea forces as the exigency of affairs might require. This unprecedented and extra-



ordinary vote of credit, moved by Sir Robert Walpole, awakened all the patriotic ardor of the friends to the constitution; and the impolicy, the folly, the danger of intrusting such vast powers in the hands of the sovereign, were exposed with all the energy of truth and fire of eloquence. It was, in fact, nothing short of a total surrender of all the rights of parliament; for if we give the king a power to raise what money, and what military force he pleases, we give up that right on which all other rights depend. A precedent like this renders parliament useless, and serves, by a sanction so pernicious, to make ministers more daring, and the oppressions of the people more grievous.

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The motion for the address was carried in the affirmative, and the parliament, having now sat nearly the full term prescribed by the Septennial Act, was dissolved on April 18, 1734, and a new parliament immediately convoked by royal proclamation.

The new parliament, convened in January, 1735, soon displayed a disposition to support the measures of administration with a zeal equal to their predecessors. The most extraordinary circumstance in this session was the election of the sixteen Scotch peers. It was stated to the house of lords, that undue influence and illegal practices had been used in the election, and engaging peers to vote for the representatives of



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the peerage of Scotland, as were inconsistent with parliament, contrary to the design of those laws which directed the election of the Scotch peers, and subversive of the principles of the constitution. It must be acknowledged the petition containing these statements was of a very extraordinary nature, for it had a tendency to vacate the seats of all the sixteen peers who sat for the peerage of Scotland. It was doubtful whether the house had even a power of receiving such petition; nothing in the articles of the union gave a British house of lords a right to interfere in the election of the Scotch peers, unless some particular charge was stated, and offered to be proved. The allegations in the petition being general, no person was named. On the other hand, the facts contained in the allegation were of a very bad complexion. It was positively asserted that the list of sixteen peers for Scotland had been formed by persons high in trust under the crown, previous to the election itself. The peers were solicited to vote for this list, without the liberty of making any alteration, and endeavours were used to engage peers to vote for this list, by promise of pensions and offices, civil and military, to themselves and their relations, and by actual promise and offers of sums of money. Several had received money, and releases of debts owing to the crown were granted to those who voted for this list. To



render this transaction more infamous, a battalion of troops occupied the abbey court of Edinburgh, and continued there during the whole time of the election, while there was a considerable body lying within a mile of the city ready to advance on the signal. Although these circumstances embraced what was of the utmost consequence to the freedom of election, yet under the pretence that the petition was informal, and the allegations not satisfactorily stated, the inquiry was not entered into, nor did the house take any further cognizance of the truth of those facts which had been alleged.

The mutiny bill at this time, received a material alteration : and every officer who inlisted men was obliged, within a certain time to carry the person inlisted before one of the next justices of the peace, when the man should be at liberty to declare his dissent, and upon his returning the inlisting money, and paying all expenses, was to be discharged.

Several members complaining that their letters were opened at the post office, a committee was appointed to enquire into the matter. This gave rise to a remarkable discovery. It appeared that when the commons passed the bill, granting the post office revenue to Charles the Second, they annexed to it a clause, reserving to themselves the privilege of franking. When this bill was carried to the



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upper house, the lords, offended that no such provision was made for them, passed the bill without the clause annexed. This alteration would certainly have caused the miscarriage of the bill, in the lower house, had not the ministers assured the members, that their letters should be permitted to go free from postage. Thus by the jealousy, not of the crown, but of the two houses, the members of both were obliged to depend upon the sole will and pleasure of the sovereign for the privilege of franking, which they meant to have reserved to themselves by an express law. They have, however, always considered this privilege as their own inherent right, and independent of royal favor. Secretaries of state are authorized to open any letter, in order the better to discover conspiracies.

Nothing material passed in parliament until the session which commenced in November, 1739; and closed April, 29, 1740. The pension bill was, as it always had been, passed by the commons and rejected by the lords. The place bill again introduced with many judicious modifications and numerous exceptions, was thrown out by a small majority of the commons in a very full house.

The opposition becoming very strong, they resolved to make a personal attack on the minister. But after a long and violent debate the



motion for the address to the king to remove Sir R. Walpole, was negatived by a great majority. The credit and authority of the minister were however sensibly impaired by repeated attacks.

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A new parliament had been summoned, which met on the first of December, 1741. The ministers had been extremely negligent in regard to elections; and the opposition taking advantage of this omission, had exerted themselves with so much industry, that they obtained an equality, if not a majority of voices. The affair of the Westminster election had been of great service to them. A riot having happened upon that occasion, the magistrates had called in the assistance of the military power; and this circumstance being soon known over the kingdom, inflamed the people highly against the measures of the government.

Sir Robert Walpole foreseeing that he should not be able to maintain his superiority in the new parliament, resolved to resign all his places, after having done every thing to serve his friends, and to prevent an impeachment by any violent resolutions. He continued, therefore, to give his attendance until the second of February, 1742. A petition from the electors of Westminster coming after a short interval under the cognizance of the house, the election of the sitting members, who were the court



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candidates, was declared void by a majority of four voices, and the high bailiff committed to custody. Other controverted elections were likewise decided to the disadvantage of the court, and against its utmost exertions. Having been treated with great severity during the debate, Sir R. Walpole protested he would never again enter the house. In this resolution he was further confirmed by the steadiness of the Prince of Wales, who was now at the head of the opposition. On the ensuing day the king adjourned both houses of parliament until the eighteenth, and Sir R. Walpole resigned all his employments, after being created Earl of Orford.

Various intrigues and negotiations were carried on during the recess. It soon appeared that a division had taken place among the patriots, and several of them who had made the loudest professions of honor and virtue, who had so often menaced the minister with inquiry and impeachment, and who had boasted that no artifice could dissolve the union between them, had privately acceded to an insidious and disgraceful accommodation with the court, of which the impunity of the late minister was understood to be a fundamental article. The nation saw with surprize and indignation, a change not of measures but of men; they saw the old system not only adopted but confirmed



and strengthened; they saw the same influence in parliament exerted for the same purposes; and in the transports of their rage they branded the new ministers as apostates and betrayers of their country. Patriotism was ridiculed and exploded as an illusive and empty name.

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In order to gratify the nation with some appearance of attention, the new ministry instituted a committee of inquiry into the conduct of Sir R. Walpole, with full power to call for all the treasury books and papers, and for whatever might enable them to make discoveries. They accordingly summoned before them Paxton and Scrope, the one late solicitor, and the other late secretary to the treasury. The first was accused of having given, in 1735, the sum of five hundred pounds to one Boteter, to enable him to carry his election for Wendover. The other was questioned with regard to the sum of one million fifty-two thousand two hundred and eleven pounds, which in the space of ten years had been traced into his and Sir Robert Walpole's hands. Both of them refused to give any answer, without his majesty's permission, about the disposal of money issued for secret service; Paxton was committed to Newgate; Scrope was dismissed without any punishment. George Vaughan, a confidant of the late minister, was likewise examined, with respect to a practice which



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had been charged upon that minister, namely, his obliging the possessor of a place or office to pay a certain sum out of the profits of it to some person or persons recommended by the minister. Vaughan begged to be excused answering, and was dismissed from the bar. A bill was next introduced for indemnifying such persons as should make discoveries concerning the disposal of public monies or offices. It passed the lower house, but was rejected by the upper: a circumstance which created a strong suspicion, that a compromise had been made between the late and present ministry; and the facts, which would have proved the guilt of Sir Robert Walpole, had been industriously suppressed. The great charge against him was, that he had employed bribery at elections, and influenced the return of members to the house of commons. By carrying those obnoxious measures into effect, the interest of parliament was separated from that of the people; a majority in both houses was obtained and secured by the most degrading arts of political depravity. Since the establishment of this system of ministerial corruption, which remains to this day in full vigor, the deliberations of parliament are become little better than the contests of faction, under the unsubstantial name of freedom. Instead of displaying wisdom, integrity, and benevolence, it is vir-



tually degraded into a court for registering royal edicts. A reform of the representative system, a progressive reduction of the national debt, a total abolition of all useless and superfluous places, pensions, and sinecures, upon which the hydra, *corruption*, feeds, and thrives, and the reduction of the standing military force, are alone adequate to accomplish the mighty task of a national regeneration.

The rebellion in Scotland having been entirely suppressed, the government now at leisure to punish those who had been concerned in it, passed acts in 1745, for disarming the highlanders, abolishing the national dress of the Scotch, obliging all schoolmasters in Scotland to take the oaths to the government, and restraining the exercise of the episcopal religion in that kingdom, where most of the episcopists were professed jacobites. And in the course of the ensuing session an act was made for abolishing the heritable jurisdictions, and taking away the tenure of wardholdings in Scotland : which, being a species of slavery, and founded on the feudal system, were deemed an inconsistency in a free government, invested the superior with a dangerous power over their dependents, and were reckoned one of the principal sources of all those rebellions which had broke out since the revolution.

The parliament which had met in the month



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of December, of the preceding year, 1744, made it soon appear that the various revolutions which had taken place in the British cabinet, were by no means unfavorable to the views of the court. As the last effort of expiring patriotism, however, it was determined to bring to a decisive test, the sincerity of those professions which the ministers, recently appointed to their situations, had for so many successive years, accustomed themselves to repeat within the house. Among the most favorite topics frequently insisted on by them when opposed to the court, was the baneful effects of ministerial corruption, which they thought at that time could not be so effectually prevented as by a restoration of the ancient constitution of parliament agreeably to the ancient statutes, that parliaments were to be holden every year. But in the debate which ensued on the question respecting the abolition of the septennial act, which was moved shortly after they came into power, they observed a profound silence, and the question was negatived by a majority of thirty-two, out of two hundred and sixty-three members.

Among the observations made by Mr. Carew, who was the mover of this important and patriotic question, it was urged, that the constitution of annual parliaments is not only sanctioned by ancient practice, but by the



unalterable dictates of reason. In order that the representatives of a great nation should be acquainted with the state of its wishes, wants, and grievances; it is necessary that there should be an intimate and habitual communication between them and their constituents. But when members are chosen for a number of years, they too frequently on their election appear to relinquish at once the character and feelings of delegates, and fixing their abode in the metropolis, visit their constituents only when it becomes necessary to solicit their votes at the eve of a new election. It is the peculiar and proper province of the house of commons, to convey to the sovereign the sentiments of the nation, both with respect to the measures he adopts, and the ministers he employs. But this duty cannot be justly and faithfully executed, when there is no proper intercourse established between those who represent, and those who are represented. The interest of the prince and people cannot really and truly differ; he can only be great in their greatness, and prosperous in their prosperity. But the general interests of the people, and the personal interest of the minister, may very essentially differ. He may have no other ends in view, than to impoverish and enslave the people, in order to enrich and aggrandize himself and his master. And it is easy, during a long term of



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delegation, for artful and designing men to misrepresent the sentiments of the people to the sovereign, and to prevent by sinister and corrupt practices, the integrity of those persons whose duty it is, and who are expressly appointed to guard the liberties, and protect the rights of the people. The house of commons is no more than the attorney of the people, and it is unreasonable that any man should be intrusted with a power of attorney irrevocable for a long term of years. The septennial bill was passed for the purpose of compelling the people to give an irrevocable power of attorney for that term. The practice of long parliaments was first introduced in the reign of Richard the Second, when the interests of the country were sacrificed by wicked ministers, to gratify the violent passions of the monarch. But the discontents and murmurs of the people at last produced an universal convulsion, which terminated in his ruin, and in the advancement of the Duke of Lancaster to the throne, without any other title than that of having rescued the people from slavery. This was the fate of the prince who first introduced long parliaments; and so long as a corrupt majority may be more easily obtained in a long than a short parliament, so long will it be the interest of ministers to oppose any limitation of the duration of parliaments, though the interest of the monarch



and people ever so manifestly require it ; and it is hard to say what a corrupt parliament may not attempt. CHAP.  
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These arguments were ably seconded by Mr. Lydenham, who observed, that for the purpose of preventing corruption, and diminishing the extent and effect of ministerial influence, no measures would be found so effectual as the restoration of annual parliaments. To the fatal introduction of long parliaments he ascribed in a great measure, that remarkable change in the manners and morals of the people at large, which had of late years taken place in this country. No sooner did ministers begin to solicit the votes, instead of convincing the understandings of the members of parliament ; no sooner were rewards lavished on those who complied with their solicitations, than the public order was disturbed by violent competitions at elections. We must render it impossible for a minister to expect to gain a majority in parliament, or at elections, either by bribery, or by a partial distribution of places and preferments, if we intend to restore that spirit by which our ancestors preserved their liberties, and gained so much glory to their country. To effect this, annual parliaments are necessary. By removing the means of temptation, the honesty of the people would



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be recovered and preserved. No candidate would be at the expense of corrupting, especially as he could not expect to be repaid by being himself corrupted, by the minister after he is chosen. Annual parliaments will demolish the market of corruption. Ministers will not corrupt, when corruption can be of no avail, and though contests may occasionally take place, the magnitude of the object will not be such as to occasion either venality or violence. The bill passed in the reign of Edward the Third, was evaded by the ingenuity of the lawyers. The words of the act are these: "A parliament shall be holden once a year, and oftener if need be." The lawyers maintained that the words "if need be," related to the first part of the law as well as the second, that is, that a parliament shall be held once a year if need be, or oftener if need be, a construction which rendered the act itself nugatory. In the thirty-sixth year of the reign of the same monarch, therefore, a new law was passed, by which it was enacted, without any reserve or limitation, "that a parliament shall be holden *every year*." This set the invention of the lawyers again at work, in order to find out a new evasion; and in the next reign, the practice of prorogation was introduced. Every session of parliament was declared to be



a parliament, and the liberties of the nation were sacrificed by a parliament corruptly chosen, and illegally continued.

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These patriotic sentiments, dictated by just and noble ideas of government, were, however, disregarded. Swift, in his writings, has this remarkable expression, “ I adore the wisdom “ of that Gothic constitution which made par- “ liaments annual.” The speeches of those virtuous senators which we have quoted, display a glorious prospect of political reformation, which it is to be hoped is now rapidly advancing, and which, when effected, will throw a lustre on those names, who are at the present moment so ably advocating the cause of the people.

About the year 1749, Lord Bute, who afterwards cut so conspicuous a figure in the politics of this country, acquired that ascendancy he so long preserved. At no period had there ever been so great a selection of men of talent among the ministry. Mr. Murray, afterwards Earl of Mansfield, was solicitor-general, and Mr. Pitt, paymaster to the forces, who had early distinguished himself by the superiority of his talents, and the animation of his eloquence, which has been compared to “ the “ lightning which flashed from heaven, blasting “ where it smote, and withering the nerves of



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“opposition.” To these names may be added those of Fox and Pelham.

When the parliament met this year, which it did on the 16th of November, it passed several very salutary acts, and one in particular for reducing the interest of the national debt. By this act, the public creditors were to receive four per cent. for one year, three and a half per cent. for seven years, and three per cent. ever after. This scheme owed its origin to Mr. Pelham, and Sir John Barnard, one of the members for London. Another act of vast national importance was passed for encouraging the British White Herring and Cod Fisheries.

The Prince of Wales dying in 1751, and his eldest son, the present king, being then only in his thirteenth year, a bill was passed for settling a regency in case of the king's demise before his successor attained to the age of eighteen. The plan they had formed for this regency was hazardous and dangerous, which, had it been carried into execution, would have been pregnant with much evil. But as the king lived until his successor had arrived to the age of majority, the bill sunk unnoticed into silence and oblivion.

A reformation of the calendar having been introduced by Pope Gregory the Thirteenth, in the sixteenth century, but as the Roman pontiff had authority over the catholic countries

only, the ancient computation of time was still in use in England, and the other kingdoms of the north. This system was now introduced, by a specific act of parliament, into the kingdoms of Great Britain and Ireland: an alteration not less favourable to mercantile than to astronomical accuracy and precision.

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This year was distinguished by an incident which ought not to pass unnoticed. It regarded the Westminster election. Lord Trentham, one of the representatives of that city, having accepted a place under the government, had consequently vacated his seat in parliament. He again offered himself a candidate, along with Sir George Vandeport, who was supported by all the strength of the opposition. After a violent struggle, Lord Trentham was declared duly elected. The party who opposed him, however, had been guilty of so many outrages, that Mr. Crowle, an attorney, and Mr. Murray, brother to Lord Ellbank, one of the senators of the college of justice in Scotland, the principal leaders of the mob, were summoned before the house of commons. They were both of them required to kneel. Mr. Crowle did so, and was reprimanded by the speaker. When he rose, he wiped his knees, and said, he had never been in so dirty a house before. An allusion, as the wits of the day said, rather to the characters of the members than to the dirtiness of the floor.

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And thus amply repaying himself for the mortification he had suffered. Mr. Murray refused to kneel; and for this contempt of the authority of the house was committed to Newgate, where he remained during the whole course of the session, at the expiration of which he returned home in triumph. He would probably have been recommitted to the same place at the next meeting of parliament, had he not before that time retired out of the kingdom.

The next year, 1752, was not distinguished by any other event than the passing of two bills which became extremely unpopular. One to permit persons professing the Jewish religion to be naturalized by parliament; and another for preventing clandestine marriages. The former act was repealed during the ensuing session; the latter continues still in force.

Nothing very material occurred from this time to the conclusion of the reign of George the Second. The patriotic address of speaker Onslow in presenting the money bills, in 1756, was conveyed in language at once bold and animated. It particularly alluded to the subsidizing an army of foreign troops, a thing *unprecedented—unheard of—unknown*. The address discovers such strong symptoms of democratic resolution, that, had the liberties of the nation been openly invaded, would have exhibited itself in a manner fatal to ministers—admonitory to kings.

During the latter years of George the Second the revolutions in the administration of the government were frequent, and were carried on with much violence by the opposite parties in the house. Mr. Pitt and Mr. Legge were the favorites of the nation ; and after having been twice dismissed from their employments, were at length restored without one dissentient murmur. The spirit of faction seemed to be extinguished, and in consequence of a general coalition of parties, all opposition in parliament was, for the moment, annihilated.

In the course of the parliament of 1759, an attempt was made to render efficient the famous qualification bill of Queen Anne, by the introduction of a bill, which, with some modification, eventually passed into a law. By virtue of this new act, it became necessary for every person elected a member of the house of commons, to deliver in a paper or schedule to the speaker of the house, specifying the property by which he makes out his qualification. But this regulation served only to increase, in some degree, the trouble, and not at all to diminish the frequency of evasion. The truth is, that the act, which was originally designed to promote the interests of a faction, is so contrary to the sense and interest of the nation, that it neither can, or ought to be, enforced. Perfect freedom of choice on the part of the people, is

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the only security for the integrity of the representative body: and to impose any arbitrary restrictions of this nature, by which they are deprived of the services of the most honest and able members of the community, is an unconstitutional violation of their just and inalienable rights.

One of the first acts of George the Third, was to render the commissions of the judges permanent. By the statute made in the reign of King William, their offices determined at the demise of the crown. His majesty, however, now declared, that he considered the independency and uprightness of the judges as essential to the impartial administration of justice, and one of the best securities of the liberty of the subject, as well as conducive to the honor of the crown. He, therefore, recommended that such further provision should be made for securing the judges in the enjoyment of their offices, and the permanency of the salaries annexed to them, notwithstanding such demise.

The first parliament of George the Third met in the month of November, 1761, and Sir John Cust was elected speaker of the house of commons in the room of Mr. Onslow, resigned.

From the commencement of this reign, a report had been raised, and industriously circulated, that the king was strongly inclined to favoritism; and, particularly, that he was un-

reasonably attached to the Earl of Bute; who was supposed to possess a larger share of his sovereign's good will, than any other nobleman. Whatever foundation there might have been for this report, there appears to have been some better ground for another opinion that was circulated, that a strong prejudice had been conceived against those who were intrusted with the direction of public affairs towards the latter end of the preceding reign; and particularly against the family of Pelham. A resolution, therefore, it is affirmed, was now taken, to get rid of that family and all its connections. The situation of the Duke of Newcastle was rendered so unpleasant, that he resigned his post of first lord of the treasury, which was immediately bestowed on Lord Bute. This last appointment tended to confirm the people in the opinion they entertained of the king's partiality towards his lordship. The Duke of Newcastle was informed, that the king proposed, in consideration of his past services, to grant him an ample and adequate pension. But his grace nobly replied, "that if he could not be permitted to serve his country, he was at least determined not to be a burthen to it."

The war, which had been carried on for seven years, had been attended with a success almost incredible; yet, at its conclusion, the national debt amounted to about one hundred and forty-

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eight millions. Although the peace of Fontenoy was almost universally unpopular, the decided approbation of the parliament seemed to insure the continuance of the minister's power: and the real intrinsic merits of the treaty, with the beneficial consequences naturally arising from the restoration of peace, might be reasonably supposed gradually to conciliate the minds of the people. But other causes of dissatisfaction soon arose, which increased, almost to phrenzy, the popular odium against the minister and the court, and converted the national ebullitions of discontent into a tempest of faction, which most alarmingly agitated, and in the progress of its fury seemed, at one period, to threaten scarcely less than the absolute wreck and destruction of the government.

Though Lord Bute possessed so large a share of the royal favor, he had never been able to acquire public confidence. He was still regarded with a jealous eye, as a man, who had been raised to his present high station, not as a reward for his former services, nor from any proof he had given of his talents for such an office, but merely from an opinion (perhaps well founded), which his majesty had formed of his virtue and ability. He had been, from his first introduction into power, becoming every day more unpopular: and a tax which he now ventured to lay upon cyder, served at last to com-

plete his downfall. He resigned his place as first lord of the treasury in the month of April, and was succeeded by Mr. Grenville. CHAP.
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The terms of the peace, though approved by the parliament, and by a great part of the nation, did not appear to give general satisfaction. They were violently attacked in several periodical writings; particularly in a paper called the North Briton, written by Mr. Wilkes, member for Aylesbury. In the forty-fifth number of this work, having attacked the king's speech with a freedom hitherto unknown, the ministers thought they could not pass it over in silence. A general warrant was, therefore, issued to arrest the authors, printers, and publishers of the North Briton. In consequence of this, on the 29th of April, 1763, Mr. Wilkes was seized and committed to the Tower. Several printers were at the same time apprehended on suspicion of being concerned in printing this obnoxious paper, but they afterwards brought their actions against the messengers who had seized them, and obtained considerable damages. Application being made to the court of common pleas for an *habeas corpus*, a writ was accordingly issued, in consequence of which Mr. Wilkes was brought up to Westminster hall. The case being new and important, he was, however, remanded, that the judges might have leisure to form their opinion. When again brought before

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them, on the sixth of May, lord chief justice Pratt, afterwards Lord Camden, a firm and unalterable friend to constitutional liberty, proceeded to give the opinion of the judges. He declared, as to the leading points involved in this complex question, the commitment of Mr. Wilkes to be not in itself illegal, being justified by numerous precedents; and though, in strict contemplation of the law, the warrant of the secretary of state was not of superior force to that of a justice of peace, where a strong combination of circumstances gave a strong suspicion of facts incompatible with the public safety, he was supported in the commitment even without receiving any particular information for the foundation of the charge. As to the second objection, the court was of opinion, that there was no necessity for the specification of those particular passages in the forty-fifth number of the North Briton which had been deemed a libel. The paper did not, at that time, come under the cognizance of the court, nor could it, without the assistance of a jury. As to the the third head, the chief justice admitted, that the privilege of parliament was violated in the person of Mr. Wilkes: for the privilege of parliament could be forfeited only by *treason, felony, or breach of the peace*; but Mr. Wilkes stood accused of writing a libel, which did not come within that descrip-

tion. At most, it had but a *tendency* to disturb CHAP.
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the peace, and this was not sufficient to destroy the privilege of a member of parliament. The court then discharged Mr. Wilkes, against whom, however, a prosecution was immediately commenced by the attorney-general.

The house of commons were, however, of a different opinion with the judges. They resolved that number forty-five of the North Briton, was a false, scandalous, and seditious libel; and that the privilege of parliament did not extend to the case of writing such a libel. The lords, also, concurred in this resolution, though not without a violent debate, a protest being entered against it by seventeen peers. As an additional proof of their displeasure, the two houses ordered the North Briton to be burnt at the Royal Exchange by the hands of the common hangman; and this order was accordingly executed, though not without difficulty and danger. The parliament began sensibly to feel the effects of its indiscretion in thus committing themselves by a precipitate interference with an affair to which their jurisdiction did not extend, and of which the established courts of judicature alone could properly take cognizance.

On the 14th of February, 1764, Sir William Meredith moved, "That a General Warrant for apprehending and seizing the authors, printers,

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and publishers of a seditious libel, together with their papers, is *not* warranted by law." The ministers were embarrassed by the popularity of this motion. Mr. Pitt exerted himself with ardor on this occasion. The charge, he said, against Wilkes, was writing and publishing a libel:—what was there in this crime so heinous and terrible as to require the use of this formidable engine, which, like an inundation, bore down all the barriers of public security? It was plainly the indulgence of a violent resentment, pointed against a particular person. Surely parliament could not see the extent of the surrender it had made! A vote had passed by which the personal freedom of every representative of the nation was now at the mercy of his majesty's attorney-general. Mr. Pitt dwelt most forcibly on the solicitude with which the constitution watched over the personal safety of the meanest individual. It is a maxim of our law, said he, that every Englishman's house is his castle. Not that it is surrounded with walls and battlements. It may be a straw built shed. Every wind of heaven may whistle around it. All the elements of nature may enter in. But the *king* cannot: the *king* dare not.

An adjournment of the debate was carried by a majority of fourteen voices only, in one of the fullest houses known for many years; the mi-

nority on this occasion being no less than two hundred and twenty. Such a defeat was considered as equivalent to a victory. CHAP.
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In the mean time Mr. Wilkes had commenced an action in the court of common pleas, against Mr. Wood, under secretary of state, for seizing his papers, and a verdict was given in his favor with a thousand pounds damages, and full costs of suit. However, he was shortly after expelled the house of commons, and the peers proceeded against him for breach of privilege, for having affixed the name of the Bishop of Gloster to a book of an immoral tendency; while he was indicted in the courts below for blasphemy. Expelled by one house, and under the censure of the other, prosecuted at the same time for a libel, and blasphemy, he began to be abandoned even by his warmest friends. In a few months he was outlawed for not appearing to the indictments against him, and the actions he had commenced against the secretaries of state fell, of course, to the ground. General warrants were afterwards declared illegal by a resolution of both houses, and this was the only advantage arising from the dispute between Mr. Wilkes and the ministry.

That all the members of a state ought to contribute to the expenses of its government, in proportion to their abilities, seems to be a maxim that cannot be disputed. It is equally certain,

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that, in a free state, taxes for this purpose should be imposed upon none but those who are either actually or virtually represented in the legislature of the country. Notwithstanding this last position, which appears to be incontrovertible, the British parliament now ventured to impose a stamp duty upon the American colonies, who were, certainly, in no wise represented in the house of commons. They, therefore, considered the tax as illegal, and almost unanimously refused to submit to it: and though this act was never strictly enforced, nor the duty intended to be raised ever levied, yet it laid the foundation of that unhappy contest which afterwards broke out between Great Britain and her colonies; and finally terminated in the complete separation of those valuable dependencies from the British crown and nation.

To what cause it was owing, whether to an attempt to introduce men into the public offices of the state who did not possess the confidence of the people; or to the rendering the ostensible servants of the crown subject to some secret influence, which directed and controled all their public motions, and thereby made them responsible for measures which they never advised, and perhaps even disapproved, we will not take upon ourselves to determine: certain it is, that the earlier part of this reign was distinguished, or rather disgraced, by a change of

ministers, and consequently of measures, not to be found in any other period of English history. CHAP.
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The Grenville administration gave way to that of the Marquis of Rockingham, who was appointed first lord of the treasury in the room of Mr. Grenville. The chief business of the new ministry was to undo all their predecessors had done: particularly, repealing the stamp and cyder acts; as, on the other hand, all they now did, was, in turn, undone by their successors in office. Nor was it long before they had the mortification of giving place to successors. In the ensuing year, 1766, the Duke of Grafton was appointed first lord of the treasury, in the room of the Marquis of Rockingham, the Earl of Shelburne superseded the Duke of Richmond, as secretary of state; Lord Camden, lord chancellor, in the place of the Earl of Northington; Charles Townsend, chancellor of the exchequer, in the room of William Dowdeswell; and Mr. Pitt, new-created Earl of Chatham, lord privy seal.

It was deemed requisite to bring in a bill of indemnity, in order to prevent any prosecutions in courts of law of the officers of the crown concerned in the act of embargo on the exportation of corn, which had been previously passed, in consequence of the extreme deficiency of the crops. But it was remarked, that though the bill provided for the indemnity of the executors

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of the proclamation, it made no mention of the *advisers*. The amendment proposed in consequence of this omission occasioned warm altercation. Lords Chatham and Camden contended, that no indemnity was wanting for those who had advised the crown to adopt this measure. The power of providing for the public safety, in great emergencies, they asserted, was lodged in the king. And this doctrine they affirmed to be by no means subversive of the security of the constitution, or contrary to the spirit of liberty, as it can only be reduced to practice on occasions of extreme necessity, when the parliament does not sit, and cannot be conveniently assembled.

Lord Mansfield urged with great force, in reply to these reasonings, “ that the law of England knew of no power of suspension in the prerogative : that if the plea of necessity is at once admitted, and the crown allowed to be the sole judge of that necessity, the power of the crown would be unlimited ; for there is no case to which it might not be made to extend, and discretionary power would quickly degenerate into despotism. For this reason, the wisdom of the legislature had deprived the crown of all discretionary power over positive laws. Though parliaments were not immortal, their acts never sleep ; they are not to be evaded by flying even into a sanctuary. The *law* is above the king,

and he, as well as the subject, is as much bound by it during the recess as during the session of parliament, because no point of time, or emergent circumstance, can alter the constitution, or create a right not antecedently adherent. If the power had a legal right to suspend or violate one law, it must have the same right to violate another, and another, until the whole system of our jurisprudence is overturned. A just regard to the safety of the sovereign, and to the *liberty* of the subject, render it necessary to shut up every avenue to tyranny; that as it hitherto has been, so may it continue to be the distinguishing characteristic of our kings, that their authority is the authority of the laws, and they reign over free men, and not over slaves." Impressed by these considerations, the house passed the bill with the amendment.

The quarrel between Great Britain and the colonies continued to grow every day more violent. An act of parliament had been lately made, enjoining the colonies to furnish his majesty's troops with necessaries in their quarters. This act the colony of New York refused to obey; and another act was passed in 1767, restraining the assembly of that province from making any laws until they had complied with the terms of the previous statute. The Americans on their side expressed their resentment at this restraint, by some severe resolutions

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against the importation of European, by which they no doubt meant British commodities.

In the course of the next session of parliament, which commenced on the twenty-fourth of November, 1767, an attempt was made to pass a bill, intituled the Nullum Tempus Bill, which had its origin from a dispute between the Duke of Portland and Sir James Lowther, regarding certain lands which had been granted to the first Earl of Portland by William the Third. These lands were the manor of Penrith and its appurtenances, in which were supposed to be comprehended the forest of Inglewood, and the manor and castle of Carlisle. It was now asserted that neither this forest, nor the manor or castle, were included in the grant; and upon an application from Sir James Lowther, a lease of them for three lives was granted him by the crown. The Portland family, who had been in possession of these estates nearly seventy years, and were therefore supposed to have, if not a strictly legal, at least a prescriptive right. It is true there was an old maxim in the law, which said, *Nullum tempus occurrit regi*—no length of time or possession can be a bar to the claim of the crown. But, in order to guard against the dangerous use which might be made of this principle, an act was passed in the reign of James the First, ordaining, that the quiet and uninterrupted possession of an estate for sixty

years should be a bar to the crown from any right of suit to recover it, under pretence of any flaw in the grant, or any defect in the title. This act, however, was only retrospective. It regarded only grants which had been made before the act took place. The object of the present bill was to establish, in future, a quiet possession of sixty years as an effectual bar against any claim of the crown. The attempt miscarried for the present, but it succeeded in the following session; and thus the oppression of an individual, agreeably to the happy genius of the English constitution, became the means of extending and securing the rights and liberties of the community at large.

It is worth remarking, that at this period, a bill of singular importance passed the Irish parliament, limiting the duration of parliaments in that kingdom to eight years, to which the sanction of the crown was, after a long delay, reluctantly given. Formerly, the Irish parliament continued during a whole reign, and as vacancies occasionally happened, they were filled up by new elections, so that the Irish had only a new parliament at the accession of a new king, and consequently, except in the very beginning of the parliament, could hardly be said to have any real representatives at all.

As the natural date of the British parliament

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was now near expiring, it was dissolved in the spring of 1768, and writs were issued for assembling a new one. The next general election was productive of excessive disorders, and was signalized above all others by the vast sums expended in electioneering contests. Many private fortunes were ruined, or materially injured, by such contests, carried on with the utmost shamelessness of political depravity. Mr. Wilkes, who had remained abroad an outlaw ever since the year 1763, now returned, and, even while the outlawry was in force, offered himself, first, as a candidate for the city of London, where he failed, and afterwards for the county of Middlesex, where he succeeded. Doubts were at first entertained whether an outlaw could be chosen a member of parliament; but so many precedents were produced in the affirmative, as rendered the legality altogether indisputable. Being now secure, as he thought, of a seat in parliament, Mr. Wilkes surrendered himself to the court of King's-bench, by whom the writ of outlawry was reversed, and he was sentenced to suffer an imprisonment of two years, to pay a fine of a thousand pounds, and to find security for his good behaviour for seven years. The severity of the sentence was rendered more odious by the extraordinary and unjustifiable methods taken to procure his conviction, and

by the arbitrary and unprecedented alteration of the records, by direction of the judge, on the night preceding the trial.

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When the new parliament was convened, a number of people were assembled in St. George's fields, in order to see Mr. Wilkes proceed to the house from the King's-bench prison, where he was confined. The people refusing to disperse after the riot act had been read, a party of soldiers was sent for, who, on having stones thrown at them, fired; in consequence of which one man was killed, and several mortally wounded. Lord Weymouth, one of the secretaries of state, wrote to the Surrey justices, thanking them for their conduct. Mr. Wilkes immediately published it, with a preface sufficiently daring and indignant. A complaint of breach of privilege having been made by Lord Weymouth, the house of commons resolved, that the prefatory introduction to the letter of the secretary of state be "an insolent, scandalous, and seditious libel;" and this was either considered as a reason, or made a pretence, for expelling Mr. Wilkes the house. The freeholders of Middlesex, however, were of a different opinion from the commons; for they immediately, and unanimously, re-elected him their representative. This election was declared void, and a new writ was issued. The freeholders still persisted in their former sentiments; and Mr. Wilkes was

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elected a third time without opposition. This election was declared void as well as the preceding; and, lest the freeholders of Middlesex and the house of commons should go on for ever, the one in electing Mr. Wilkes, the other in declaring his election invalid, Colonel Luttrell, son to Lord Irnham, and a member of parliament, was persuaded to vacate his seat by the acceptance of a nominal place, and to offer himself a candidate. He did so; and, though he had only 296 votes, and Mr. Wilkes 1143, yet he was declared in the house, by a great majority, the legal member.

The people, however, were by no means satisfied with this decision of the commons: they even questioned their right to reject any member, after he had been chosen by a clear majority of voices, and was known to be possessed of the legal qualifications. They said, that if such a doctrine were once admitted, it would be attended with the most fatal consequences: it would enable an ambitious prince, or a corrupt minister, to convert the house of commons from a real representative of the people into a mere court junto, ready to lend the weight of its authority to every measure of government, however inconsistent with the true interest or welfare of the nation. They therefore insisted, that Mr. Wilkes, notwithstanding his being rejected by the commons, was still the real member for

Middlesex; and that till he was admitted to take his seat, the parliament was by no means complete. This they maintained in a variety of remonstrances, which were presented to the crown. They first petitioned for a dissolution of the parliament; and not being able to obtain that point, they denied the legality of the present one, the validity of its acts, and the obligation of the people to obey them. In a word, they asserted that the government was actually dissolved.

The ministry had reduced themselves to a most disagreeable alternative; they had either not gone sufficient lengths, or they had proceeded too far, and it was as difficult to advance as to recede. They either should not have furnished the people with any just cause, nor even a plausible pretext for presenting such remonstrances, or they should have punished them for daring to present them. Neither of these they thought either prudent or safe.

As the government was brought into the lowest disrepute at home, the obvious effect was produced, a sovereign contempt abroad. While it was openly insulted and over-awed in the heart of the metropolis, under the eye of the legislature, could it be expected that it should be able to maintain its usual force and vigour in the extremities of the empire? The supposition is absurd. It must, therefore, be

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~ evident to every man of sense, that the rashness in the outset, and pusillanimity in perseverance, of the ministers in the Middlesex election was, if not the primary, at least the great secondary cause of the American war. Nay, some of the freeholders of Middlesex attempted to carry their speculative principles on this subject into practice. They refused to pay the land-tax, and the matter was brought to a trial; but the jury determined that they were obliged to pay it, and in so doing, they shewed more firmness and fortitude than their rulers.

On the resignation of the Duke of Grafton, Mr. Dowdeswell, in a committee of the whole house, moved, “that the house, in the exercise
“ of its jurisdiction, ought to judge of elections
“ by the law of the land, and by the custom
“ and practice of parliament, which is part of
“ that law.” The motion, if adopted, was intended to be followed by other resolutions, tending to condemn, and consequently rescind, the vote of the last session. It was, however, proposed, through the medium of the new minister, Lord North, that the question might altogether be lost, as an amendment, “and that
“ the judgment of the house in the case of John
“ Wilkes, Esq. was agreeable to the law of the
“ land, and fully authorized by the practice of
“ parliament.” Though the amendment was violently opposed, as a most unfair and disin-

genuous perversion of the true meaning of the resolution, it was carried upon the division by 224 to 180 voices; precluding, by this means, all hope of redress by any future effort in that house.

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In the upper house, Lord Chatham condemned the conduct of the commons. He denominated the vote of that house, which had made Colonel Luttrell representative for Middlesex, “a gross invasion of the rights of election, a daring violation of the English constitution, and a corrupt sacrifice of their own honour. To gratify *individual resentment*, the laws had been despised, trampled upon, destroyed—those laws which had been made by the stern virtue of their ancestors, the *iron* barons of old, to whose virtue and whose blood, to whose spirit in the hour of contest, and to whose fortitude in the triumph, the *silken* barons of this day owe their honors and security. He affirmed, that what had been mere matter of suspicion was now demonstrated to conviction, that ministers held a corrupt influence in parliament. It became, therefore, necessary to interpose at this period, in order to moderate the rage of an incensed nation on the one hand, and, on the other, to form a constitutional barrier against the criminal depredations of his majesty’s ministers.”

Although the patriotic intentions of Lord

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Chatham had not the effect he so ably endeavoured to procure, yet he was not to be diverted nor intimidated from his purpose. After a short interval, he moved for an address to dissolve the parliament. He stated the public discontents in England, Ireland, and America; affirmed that the people had no confidence in the present house of commons, who had betrayed their trust; and shewed, from the situation of public affairs, the great necessity of having a parliament in which the people can place a proper confidence. Instead, he said, of depriving a county of its representative, one or more members ought to be added to the representation of the counties, to operate as a balance against the weight of the several corrupt and venal boroughs. All arguments were in vain; scarcely, indeed, was the appearance of decorum preserved, and an unqualified negative was put upon the motion.

At this period, Mr. George Grenville introduced his famous bill for regulating the proceedings of the house on controverted elections, commonly known under the title of the Grenville Act. This was designed as a supposed effectual remedy for an acknowledged evil; the negligence and extreme partiality of the house being notoriously palpable and disgraceful. This act, however, displays more integrity than penetration or ability. In conformity to

provisions, a jury of thirteen persons are elected by ballot, in a house consisting of not less than one hundred members, to which such petition is referred; and until such jury is chosen, the house is restrained from proceeding in any business. The remedy has proved more intolerable than the evil. The rights of elections, and the qualifications of electors, are in different places so varied, intricate, and complex, and so uncertain is the issue of the generality of election contests, that no sooner was the chance of a fair and impartial hearing obtained, than the multitude of petitions presented to the house impeded, in a most perplexing degree, the course of public business. The trials themselves were often protracted to a length so intolerably tedious, that it was justly considered as a very heavy penalty to be chosen upon an election committee; and it was frequently found very difficult to make a house on the day appointed for the ballot. Session after session has elapsed before a considerable proportion of the petitions could even come to a hearing; and, by a mockery of justice, after an extravagant expense has been incurred in fees to counsel, indemnifications to witnesses, and gratuities to agents, a man is, perhaps, declared duly elected to a seat in parliament, when parliament itself may be approaching to dissolution. A remedy of a different nature is therefore, evidently necessary: as a preparatory

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step to which, the qualifications of the different descriptions of electors throughout the kingdom ought to be simplified and clearly defined. And were the house, upon the election of a new parliament, previous to its entering upon business, to divide itself into different committees, to determine upon the merits of the petitions presented, the whole process of investigation might be completed within the compass of a very limited period.

The venality of the rotten boroughs, as they are appropriately styled, in choosing their representatives, has long been a subject of complaint; and deserves not only the attention of the legislative body, but of the community.

Of this there now appeared a striking instance. Admiral Cornish, one of the members for the borough of Shoreham, dying in the course of the preceding year, an election came on for another representative, when the returning officer, knowing the majority of the electors to be both bribed and perjured, returned a candidate with only thirty seven votes, in preference to one who had eighty-seven. For this abuse of power, as it was deemed, he was called before the house of commons, when he made such discoveries as overwhelmed his enemies with shame and confusion. From his information it appeared, that the greater part of the freemen of Shoreham had formed themselves into a society,

under the name of the Christian Club, with the pretended view of encouraging acts of charity and beneficence, while it was no better than a mart of venality. The borough was sold to the highest bidder, and when the election was over their profits were divided. For this offence a bill was brought in, incapacitating eighty-one of the freemen of Shoreham from voting at elections, and for extending the right of voting to the contiguous hundreds. The nation applauded the spirit and constitutional tendency of this bill, which was supported in the house by the unanimous and zealous concurrence of all parties.

Though the spirit of addressing the throne, as to the Middlesex petition, had, in some degree, subsided, yet an occurrence, in the year 1771, revived the resentment and indignation of the people against their representatives. Though nothing can appear more reasonable than that the people at large should be furnished with all such means of information respecting the conduct of their representatives in parliament as is consistent with the dignity of the house, it had long been a subject of complaint, that the speeches of the members were, in contempt of the resolutions of the house, regularly printed in the newspapers of the day. Several members having formally stated that their speeches had been misrepresented, a motion was

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made and carried, that the printers Wheble and Thompson should appear to answer this complaint at the bar of the house. No attention being paid to the summons, a messenger of the house of commons was sent into the city to seize one of the printers, who sent for a constable to bring them both before Crosby the lord mayor. He, attended by aldermen Wilkes and Oliver, not only discharged the printer, but required the messenger to give bail to answer the complaint of the printer, for daring to seize him in the city, without the order of a magistrate: on refusing to do so, they issued a warrant for his committal, when he consented to give bail, and was suffered to depart. The commons, indignant at this contempt of their authority, as they thought it, ordered the lord mayor, and the two aldermen, to appear before them. Mr. Crosby and Mr. Oliver, as members of the house, appeared in their places, but Mr. Wilkes refused, unless he was permitted to take his seat as member for Middlesex. As they had no method of coming at the latter, they contented themselves with punishing the two former. They were accordingly sent to the Tower, where they continued in confinement until the end of the session, when their liberation was celebrated by great and general rejoicings. From this time the proceedings in parliament, and the speeches of the members, have

been published without interruption or molestation. So dangerous is it to bring undefined privileges or prerogatives into contest, where a disposition prevails to dispute all doubtful assumptions of authority.

It has been already observed, that the early part of this reign was noted for frequent and sudden changes of ministers. That of the Marquis of Rockingham, the most popular and patriotic that had yet taken place, was obliged to make way for the administration in which the Duke of Grafton occupied the post of first lord of the treasury. Lord Chatham, keeper of the privy seal, is supposed to have been principally concerned in forming this ministry, and was supposed to have directed all their measures. For some time they had neglected to consult him as usual. Provoked at this mark of contempt, he abandoned them entirely, and resigned his situation, which was given to the Earl of Bristol.

The Duke of Grafton soon followed his example, and threw up his office as first lord of the treasury, which was conferred on Lord North. And at length that administration was formed which, exercising the powers of government during twelve years, wantonly excited the American war, conducted it without prudence, and at last terminated it to the dishonor and disadvantage of Great Britain. Not receiving

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a single ray of reason from the errors of their predecessors, they cut off from the empire the immense continent of North America, the brightest jewel in the crown, and by their rash, violent, and vindictive measures, shook the mighty and majestic fabric of the British empire to its centre.

The session ended on the 8th of May, 1771, and parliament was not convened till the 21st of January in the next year. His majesty, from the throne, confidently announced the continuance of peace, from the repeated assurances he had received of the amicable disposition of the powers on the continent. It caused, therefore, great surprise that an enormous addition to the peace establishment should be proposed, under the pretext of maintaining a force superior to the French in the East and West Indies, who had strongly reinforced their troops in those distant parts. But however strong and efficacious the arguments used against those urged by the ministers of the crown, the motion for increasing the number of seamen was carried without a division.

The new minister, Lord North, endeavoured to gain upon the nation by an apparent candor and ingenuousness of disposition. Progress had been made in the reduction of the national debt: and the repeal of the port duties, which

were oppressive ; and, though with one unfortunate exception, shewed at least some inclination to accommodate the disputes so long subsisting with America. This was farther confirmed by the resignation of the Earl of Hillsborough, secretary of state for America, who was, on various accounts, extremely obnoxious to the colonies, and the subsequent appointment of the Earl of Dartmouth, who had uniformly opposed in parliament taxation in every form. Various other changes and promotions had taken place during the recess. Mr. Charles Jenkinson being nominated vice-treasurer of Ireland, his seat at the treasury board was filled by the honorable Charles James Fox, second son of Lord Holland, a young man, whose extensive political knowledge and brilliancy of talents in the senate, had much attracted the attention of the public.

On the motion of Sir George Saville, leave was given to bring in a bill for the farther extension of the Toleration Act, which was received by the house with general approbation. The house was penetrated with the force of the reasoning urged in favor of the dissenters, whose ancestors had a distinguished share in the restoration of Charles the Second, and whose uniform tenor of conduct had proved them to be as loyal and obedient to just princes, who

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made the law their rule of government, as they had been firm and resolute in their opposition to tyrants aiming at the subversion of the constitution. It was absurd and unjust to punish any class or description of men now existing, for the supposed crimes and errors of a former generation, who had been more than a century in their graves. A vast majority of the house, pleased with an occasion to display their attachment to the principles of whiggism, from which they had been charged with a disposition to depart, passed the bill with the full concurrence of the minister. But when it was carried up to the house of lords it met with a different fate, and was rejected by a majority of 102 against 29 who supported the motion. In the succeeding session the bill was again revived in the house of commons, where it passed by a great majority, and was again rejected by the upper house.

The session at length closed, which had continued more than seven months, and may be considered as the most brilliant æra of Lord North's administration. Supported by parliamentary majorities, he had carried into complete effect a plan of government and reform for India, the vigor of which was apparent, while experience could only prove its deficiency in wisdom. There appeared a fair prospect of

permanent peace abroad; and those disturbances which had so long prevailed at home, seemed gradually subsiding into a tranquillity which the nation had rarely, and for very short intervals, known since the commencement of the present reign.

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CHAPTER XX.

*Continuation of the History of Parliament in the Reign of
George the Third.*

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THE mutual jealousy which had for some time subsisted between Great Britain and her American colonies, continued every day to grow more and more incurable. The former suspected that the colonies aimed at independence, while the latter believed that Britain meant entirely to deprive them of their liberties. By a recent act, certain duties were imposed upon glass, paper, and a few other articles exported from England to the colonies; and for the purpose of collecting these duties, custom-houses were established in their sea-ports. Provoked at this violation of their rights, as they considered it, they now came to a direct, as they had formerly done to an indirect, resolution to discontinue the use of British commodities, until the repeal of those duties. To effect this purpose, the assembly of Boston wrote a circular letter to all the other assemblies, proposing an union of councils and measures. For this step the assembly of Boston

was dissolved, and a new one convened; which proved as refractory as the former, and was, therefore, in a little time, likewise dissolved. The commissioners of the customs were so roughly handled by the populace, that they thought proper to leave the town, and retire to Fort William. In a word, the spirit of discontent became so prevalent at Boston, that troops were ordered thither from Hallifax, and considerable reinforcements sent from Ireland.

The great subject of dispute was the right of taxation. The British parliament insisted on its right of taxing the colonies by its own proper authority. The Americans, on the contrary, denied this right; and said, that not being represented in parliament, they could not be legally taxed without their own consent; and rather than submit to any taxes otherwise imposed, they seemed willing to encounter every risk, and to brave every danger. In order to ascertain whether they would actually proceed to extremities, some tea was sent to America, loaded with a certain duty. The tea was sent back to England with contempt and indignation, without being suffered to be landed. It met in the harbor of Boston with a still worse reception. It was taken out of the ships by the populace, and thrown into the sea. To punish the New Englanders for this act of violence, two bills were passed in 1774; one for shutting

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up the port of Boston, and the other for taking the executive power out of the hands of the people, and vesting it in those of the crown.

Though the minister had hitherto carried every thing in parliament with a high hand, yet, as that assembly was now drawing towards an end, he became apprehensive that it would not be easy to procure another house of commons equally obsequious, if the people were allowed to be prepared for the elections in the usual manner. He therefore resolved to steal a march, and to take the people by surprise. The parliament, accordingly, was suddenly dissolved at the end of the sixth session, and a new one chosen, equally courtly and complaisant.

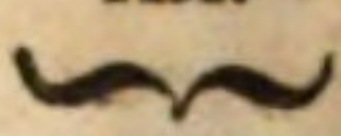
The acts of severity we have mentioned, were levelled, in appearance, only at the town of Boston; yet most of the other colonies soon took the alarm. They thought they foresaw, in the fate of that devoted place, a punishment that might soon be inflicted on themselves; as they had all been guilty nearly of the same crime, if not in destroying, at least in refusing the tea. They therefore resolved to make their cause common; and, accordingly, all the old British colonies (Nova Scotia and Georgia excepted), sent delegates, or commissioners, to a general assembly at Philadelphia; and assuming the name of a congress, presented

a bold and spirited petition to his majesty, soliciting a redress of grievances. At the same time they published an address to the people of Great Britain, appealing to their justice and humanity, and another to the Canadians, beseeching them to join the confederacy, and assist in vindicating their violated liberties. Georgia, the year following, acceded to the union, and thus completed the number of the Thirteen United Provinces, which soon after revolted from the mother country, and at last rendered themselves sovereign and independent states.

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All Europe saw with amazement the spirit of rashness, folly, and perseverance, reigning in the councils of Britain, which stimulated her to treat with unparalleled harshness and disdain those colonies which, in happier and better times, she had cherished with fond affection; and of which she might truly and proudly boast, that as no nation had ever formed colonial establishments on principles so liberal, no colonies had ever, in so short a time, attained to such prosperity, or so amply rewarded the parental care of their mother country.

Little solicitous as to the selection of the means which he employed in the accomplishment of his purposes, the obstinacy of the minister could only be exceeded by his indiscretion. A wise government would have hast-

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ened to appease those growing troubles, but the rigor and violence of their proceedings completed the alienation of America. France, the perpetual rival of England, saw with pleasure these civil commotions, and secretly encouraged the Americans to defend their rights against the despotism which Great Britain would have established, by holding out to them a prospect of future succours.

Various motions were made, and many conciliatory measures proposed by Lord Chatham, and ably, though unsuccessfully, seconded by the Earl Camden. In the house of commons Mr. Burke advocated the cause of the Americans: and, in the opinion of many, such terms might have been granted them, as would at once have satisfied their ambition, and would not have degraded the honor, nor hurt the interests of Great Britain. Several plans were proposed by the minority, but all were rejected. The king's speech, and the subsequent proceedings of parliament, left no hope of accommodation; the resolution and resentment of America rose in proportion to the arbitrary and oppressive acts of Britain.

A celebrated writer has shrewdly observed, that the public conduct of ministers is sometimes marked with such traits of insanity, that were any individual to be guilty of similar ones in private life, the next heir at law would be

justified in confining him by a statute of lunacy. CHAP.
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Never, perhaps, was a more striking exemplification of this maxim, than in the conduct of the British ministers both in the beginning and prosecution of the American war. They rushed into hostilities without understanding the spirit of the people, or even the geography of the country; from their ignorance of which they suffered severely. They would listen to no terms of accommodation short of absolute and unconditional surrender. No regard was paid to the interesting communications of Mr. Penn, and as to the petition he brought over with him, the last the congress sent to the king, he was told, that no answer would be returned to it. But the Americans soon gave convincing proofs they were not so deficient in spirit or ability as the British ministers fondly imagined. So far from being satisfied with acting on the defensive, or within the limits of the associated colonies, in a little time they extended their views into the neighbouring provinces.

The parliament of Great Britain, after a short recess, met at Westminster on the 26th of October, 1775: and the session was opened by an elaborate oration from the throne, containing charges against the colonies, the most wild and extravagant, and which breathed a most inveterate and determined animosity. The Duke of Grafton had long viewed, with the utmost



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~~~~~ solicitude, the violent measures adopted by the ministry, and determined no longer to take any share in the responsibility attached to his exalted situation. He had frequently renewed his solicitations with the ministry, for the adoption of a pacific system without effect, and as a last resource, requested an audience of his majesty, in which he stated his reasons why he could no longer take any part in the administration. The king listened with attention, and condescendingly endeavoured to demonstrate to his grace, by calm and dispassionate reasoning, the justice, policy, and necessity of the war, and the certainty of ultimate success ; and, finding he was unable to effect the conviction he wished, expressed his regret at parting with so faithful and experienced a servant. On his resignation, Lord Dartmouth was made privy seal, and Lord George Sackville appointed to the vacant post of secretary of state for the colonies.

In November, 1775, Mr. Burke moved for leave to bring in a bill “to quiet the present “troubles in America,” professedly founded on the famous statute passed in the 35th of Edward the First, known by the name of *statutum de tallagio non concedendo*. It was a wise, rational, and simple plan of conciliation, and met with a less unfavourable reception than any hitherto attempted ; but on a division upon the previous question, the numbers were 210 against

105 who voted in support of the original motion. In a few days the minister brought in his *prohibitory bill*, interdicting all trade and intercourse with the thirteen united provinces. By this bill, all property of Americans, whether of ships or goods, on the high seas, or in harbour, was declared forfeited to the captors, so that it amounted in fact, to an absolute declaration of war. The bill was combated on every ground of policy, humanity, and justice. It was pronounced to be a formal act of abdication of our government over the colonies, and drove the two countries to the fatal alternative, of absolute conquest on the one side, or absolute independency on the other. The repeal of the Boston port, fishery, and restraining acts being included in the bill, as entirely superseded in its operation; Mr. Fox moved an amendment, to leave out the whole title and body of the bill, excepting the parts relative to such repeal. This produced a warm debate, when the amendment was rejected by a majority of 192 to 64.

The Americans now conceived that matters had been carried to too great an extremity between them and the mother country, ever to admit of any sincere or lasting reconciliation. They reflected that while they continued to acknowledge themselves subjects of the British empire, they were naturally regarded by the rest of the world as rebels fighting against their

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lawful sovereign, and that foreign nations might thereby be prevented entering into any public treaty or alliance with them. Moved by these considerations, they published about this time their declaration of independence, renouncing all allegiance to the crown of Great Britain, and erecting themselves into free and sovereign states. It was plainly foreseen, and even foretold, that France and Spain would soon throw off their mask, and openly declare in favor of the Americans. But these predictions were disregarded by the ministry, and treated with derision as the visionary fancies of shallow politicians. Many of the opposition, chiefly of the Rockingham party, absented themselves from the house, and a clear field was left during the greater part of the session to the ministers. The vast supplies demanded, were granted in almost empty houses, without examination or debate.

Soon after the recess, the minister, taking advantage of the secession of the minority, introduced a bill to enable his majesty to secure and detain persons charged with or *suspected* of high treason committed in America, or on the high seas. With such insidious artifice was this bill framed, that, by the enacting clauses, the crown was enabled, *at its pleasure*, to commit any person resident in any part of the British dominions, without bail or mainprize, under



his majesty's sign manual, in any place of confinement situated in Great Britain or *elsewhere*. CHAP.  
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For though the act of treason, according to the bill proposed, must be committed in America, the crown lawyers and the high prerogative party maintained, and cases were quoted to prove, that such treasonable acts might be perpetrated by persons who had been never out of the kingdom, if its operation could be subsequently shewn to extend to America. Thus was the habeas corpus act, the bulwark of British liberty, completely annihilated by a vile and infamous construction of law, which left it in the power of the crown to apprehend, on the slightest suspicion, any individual against whom the vengeance of the court was directed, and to convey them beyond the seas to any of the garrisons of Africa, or the Indies, far from all hope or possibility of relief. The alarm occasioned by this bill brought back the members of the opposition to the house, and a most vigorous and animated resistance was made to it in every stage of its progress. The minister at length disavowed, as to himself, all design of extending the operation of the bill beyond its open and avowed objects. It was intended, he said, for America, and not for England, that he neither wished to establish an unconstitutional precedent, nor sought for any powers to be vested in the crown or its ministers, which were capable of being em-



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ployed to bad or oppressive purposes. He therefore agreed to the amendment, the principle of which was, that the clause empowering his majesty to confine such person as might be apprehended under this act *in any part of his dominions*, should be modified by the insertion of the words “within the realm;” and that an additional clause or proviso be inserted, “that “nothing in this act shall be construed to extend to persons resident in Great Britain.”

On his majesty's accession, eight hundred thousand pounds per annum had been settled for his civil list. But this sum had been found inadequate to the expenses of the civil government. Above half a million, therefore, was now granted for defraying the arrears of the civil list, and an addition of one hundred thousand pounds a-year was made to this branch of the revenue. What opinion even some of the ministers themselves had of this measure, may be easily learned from the speech of Sir Fletcher Norton, speaker of the house of commons, made to the king when he presented the bill for this purpose. He told him his faithful commons had given him this mark of *their* affection, at a time when their constituents were laboring under burthens almost too heavy to be borne. “They have,” continued he “not only granted to your majesty “a great present supply, but also a very great “additional revenue; great beyond example,



“ great beyond your majesty’s highest expense. CHAP.  
“ But all this Sire, they have done in a well- XX.  
“ grounded confidence, that you will apply wisely  
“ what they have granted liberally.” The coun-  
tenance of the king plainly indicated, how little  
acceptable was this unexpected liberty. The  
speech, however, was so agreeable to the minority,  
that they procured the speaker the thanks of  
the house for having dared for once to convey  
truth to the royal ear.

On the 7th of June, 1777, the session was  
terminated, and his majesty expressed in his  
speech his unqualified approbation of the con-  
duct of parliament, lavishing high and flattering  
compliments for the unquestionable proofs they  
had given of their *clear discernment* of the *true*  
*interests* of their *country*.

On the 20th of November, 1777, the parlia-  
ment assembled, and on the 2d of December,  
Mr. Fox moved for an inquiry into the state of  
the nation. This motion had been made by  
him in the last session, but had been negatived  
by a considerable majority. The minister now  
professed his cordial acquiescence. Amongst  
other papers thought necessary to elucidate the  
subsequent investigation, Mr. Fox moved for  
returns of such colonies or places as had, in  
pursuance of the powers vested in the commis-  
sioners, been declared at the king’s peace, or copies  
of such papers as had relation thereto. This mo-



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tion the minister vehemently opposed, and declared that he neither could or would consent to make discoveries inconsistent with sound wisdom and policy, prejudicial to the real interests of the country. During the heat of the debate, intelligence was brought, that in consequence of a motion of the Duke of Grafton, those very papers had actually been laid upon the table of the upper house: but the minister, as if to try how far the obsequiousness of the house would extend, still persisted in his refusal, and maintained, “ that the house of commons “ were not to be guided in their determinations “ by any extrinsic consideration.” And on a division, incredible as it may seem, the motion was actually negatived by a majority of 178 to 89. An act, by which the dignity of the house was most shamefully sacrificed by ministerial insolence and caprice.

The parliament shortly after determined to adjourn to the 20th of January, 1778, in opposition to an animated remonstrance on the part of the minority, who reprobated the indulgence of so long a recess at so critical a juncture. When the house again met, in consequence of the previous motion of Mr. Fox, it resolved itself into a committee on the state of the nation, but to the surprize of every one no debate ensued, nor was any reply made to his observations. On calling for the question, the motion



was rejected by a majority of 259 to 165, the largest minority which had yet appeared in this parliament in opposition to the ministry. The opposition gained strength daily, and a dawn of hope arose that the reign of the present administration might not be perpetual.

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The second plan of conciliation proposed by Lord North entirely failed, and the commissioners finding the doors of negotiation shut, published appeals to the Americans at large as were calculated to excite discord among the colonies, or seditious tumults against the several governments.

The indulgence which had been shewn to the Roman catholics made the claim of the protestant dissenters appear so extremely insidious on the part of the government, that it was judged improper to discourage the application for their relief, and a bill for extending the toleration act was therefore, in 1779, brought in and passed with little opposition in both houses. It appears evident that the ultimate success of this measure, as the clause objected to was not suffered to be withdrawn, must be attributed, not to the candor and equity of the court, but to the general temper of the times, which were happily at variance with the spirit of intolerance and persecution.

Dissensions in the cabinet had now taken place; the bill for augmenting the militia to



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double the actual number had passed the commons, but met with unexpected opposition with the lords. The compulsory clause was thrown out, the lord president, Lord Gower, and both the secretaries of state, giving their votes against it. A provision for raising volunteer companies only remained, and in this state it was returned to the commons, to the chagrin of the minister, who openly complained of the conduct of his colleagues, while his mortification was increased by the taunts of the opposition.

It has been observed by Milton, that the trappings of royalty are sufficient to set up a republic. This maxim now appeared strongly verified in the conduct of the ministry, who squandered the public money with prodigality and profusion, and economy, on a sudden, became the popular and prevailing cry throughout the kingdom. Early in the year 1780, petitions were presented to parliament by almost every county and corporation in the kingdom, with a view of obtaining a system founded on principles of strict frugality. In consequence, a bill was introduced by the minister himself, for appointing commissioners to inquire into the public accounts, and the discoveries made by them in the course of their examination, threw great light upon the collection, as well as expenditure, of several branches of the



revenue. By a plan framed by Mr. Burke, considerable retrenchments were made in the expenses of the civil list; and the boards of trade, and some other useless and superfluous offices were entirely abolished.

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The house of peers in the mean time was far from being an inattentive spectator of these interesting scenes. When the petition of the county of York was presented to the house of commons, Lord Shelburne moved in the upper house, “for an appointment of a committee of “members of both houses of parliament, possessing neither employments nor pensions, “to examine into the public expenditure, and “the mode of accounting for the same.” This motion was supported by his lordship in a very able speech, in which he declared, “that the “great point to which his wishes tended, was “to annihilate the undue influence operating “upon both houses of parliament, which, if “not eradicated, would become the ruin of the “country. To restore to parliament its constitutional independence, and to place government upon its true foundations, wisdom, justice, and public virtue, was his most earnest desire, and this could not be done “without striking at the very root of corruption.” But nothing could persuade the ministry from persisting in their invincible spirit of obstinacy; and the motion was nega-



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tived by a majority of 101 to 55, five-and-thirty of whom entered their protest on the journals.

On the sixth of April, the commons, on the motion of Mr. Dunning, resolved itself into a committee of the whole house, to take into consideration the petition of the people, which gave rise to a most important and extraordinary debate. His principal motion was, that it should be resolved by this house, “that the “*influence of the crown* had increased, was increasing, and ought to be diminished.” This resolution was ably supported by the speaker of the house, who said, that the powers constitutionally vested in the executive part of the government were amply sufficient for all the purposes of good government; but its undue influence had increased to a degree absolutely incompatible with every just idea of a limited monarchy. Notwithstanding the determined opposition of the minister, and of the placemen in general, particularly of the lord advocate in Scotland, Henry Dundas, the resolution was carried by a majority of eighteen. Mr. Dunning then moved, “that it was competent to “that house to examine into, and correct “abuses in the expenditure of the civil list, “as well as in every other branch of the public “revenue, whenever it shall seem expedient to “the house.” This was again opposed by Lord North, who strongly expressed his wish



the committee would not proceed. The motion was, however, agreed to. Mr. Thomas Pitt then moved, “that it was the duty of that house to provide, as far as might be, an immediate and effectual redress of the abuses complained of in the different petitions presented to the house.” The minister once more implored the committee to desist, but with no effect: the motion was agreed to. It was lastly moved by Mr. Fox, “that the resolution should be immediately reported to the house,” which was deprecated by Lord North, as violent, arbitrary, and contrary to the established usage of parliament. The motion, however, was carried, and the chairman reporting the resolution accordingly, they were severally agreed to.

On the tenth of April, the committee was resumed, and it was moved by Mr. Dunning, “that there be laid before the house every session, in seven days after the meeting of parliament, an account of all monies paid out of the civil revenue, to and for the use of, or in trust for, any member of parliament since the late recess.” When this resolution was carried, in spite of the objections of the ministerial party, it was also moved by Mr. Dunning, “that the persons holding the offices of treasurer of the chamber, treasurer of the household, comptroller of the house-



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“ hold, master of the household, clerks of the  
“ green cloth, and their deputies, should be  
“ rendered incapable of a seat in that house.”

In this the patriotic party still triumphed to the satisfaction of the independent part of the community, till the sudden illness of the speaker obliged the house to adjourn to the twenty-fourth of April; on which day Mr. Dunning moved for an address, “ that his majesty would be pleased not to dissolve parliament, or prorogue the present session, until the objects of the present petitions were answered.” When the house came to a division on this important question, it was found that the unfortunate illness of the speaker had infected “ the very life blood of their enterprize;” the motion was rejected by a majority of 254 to 203, and the efforts of the patriots proved finally abortive. During the recess a sudden change had taken place in the disposition of the house, and the influence of the crown became too firmly established to be in danger of diminution. The flattering prospect of political reform was at once cut off, and the petitions of more than one hundred thousand electors were contemptuously resigned to eternal oblivion.

The fourteenth parliament of Great Britain was dissolved on the first of September, and a new parliament convened, which met on the



thirty-first of October, 1780. Mr. Cornwall CHAP.  
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was chosen speaker in the room of Sir Fletcher Norton. Mr. Burke revived his famous Reform Bill, which, on the motion for the second reading, was rejected by a large majority, though ably and powerfully supported by the most eminent members of the house. Amongst the speeches delivered on this occasion, was that of William Pitt, second son of the great Lord Chatham, who had early in life been elected a member of the present parliament.

In March, Lord North brought forward the annual statement of the public account. As the expenditure of the year was estimated at twenty-one millions, he proposed raising twelve millions by a public loan, the terms of which were, even by several friends of the minister, declared to be extravagantly high, while Mr. Fox reprobated the measure as “the most corrupt in its origin, the most shameful in its progress, and the most injurious in its consequences, that ever came under the contemplation of that house.” On a division the motion was carried by a majority of 169 to 111 voices.

It would be foreign to our purpose to state the cause, or trace the effects, of the impeachment of Mr. Hastings, governor-general of Bengal, which occupied the attention of the house of commons for several years, and it



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would extend this work to detail the various motions made by the opposition against ministry; suffice it, that an entire change of administration took place, and the Marquis of Rockingham was, for the second time, to general satisfaction, placed at the head of the treasury. Lord John Cavendish acted as chancellor of the exchequer, and Lord Shelburne and Mr. Fox were made secretaries of state. Whiggism once more reigned triumphant, while the tories were reduced to the lowest extremity of shame, humiliation, and contempt. The new ministry had no sooner entered on office, than they set about the accomplishment of the great work for which they had been appointed, and accordingly negotiations for peace were opened at Paris. But before they had proceeded any length in this popular undertaking, they were suddenly disunited by the death of their leader, the Marquis of Rockingham. The appointment of Lord Shelburne to his situation disgusted some of the principal members of administration, and Mr. Fox, Lord John Cavendish, with some others in office, resigned their places, who were succeeded by Lord Grantham and Mr. Pitt.

It was during the session in 1782, that Mr. Pitt rendered himself conspicuous, in bringing forward his motion of inquiry into the state of the representation of the country; a subject



of infinite importance, and of a nature that must ever be truly interesting. The evils attendant on this corrupt and defective state of the representation had at no former time been so shamefully apparent as in this reign. The house of commons seemed to degenerate into an assembly possessing neither inclination, power, nor wisdom, but what was derived from the minister. The late Earl of Chatham was so much struck at the mischiefs emanating from the present incongruous system, that he hesitated not to predict, “that the rotten boroughs would not survive the present century, and that if parliament did not reform itself from *within*, it would be reformed with a *vengeance* from *without*.” It was with sound reason expressed by the Duke of Richmond, “that every man not laboring under natural or moral disability had an inherent *right of suffrage* paramount to all considerations of civil or political expediency.” In the session of 1780, the duke had himself prepared and offered to the house of peers a bill for a reform of parliament, on the basis of annual election and universal suffrage, on which occasion his Grace declared, “the representation of the people to be flagrantly and grossly corrupt. The constitution had been impaired, and was daily impairing, by the accumulation of abuses; and that the ten-



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“ dency of the prevailing system was to make  
“ the will of the sovereign the rule and mea-  
“ sure of the government. He even affirmed,  
“ that the parliament then sitting to be *no par-*  
“ *liament at all*, because it was not founded on  
“ that principle which alone could constitute  
“ them the legitimate representatives of the  
“ people.” But the bill was dropped as a  
measure thought to be impracticable.

London, York, and many other cities and counties, now petitioned against the unequal representation, the corrupt state of parliament, and its perversion from the original institution. The motion of Mr. Pitt, though eloquently enforced by the mover, and ably supported by Mr. Fox, was, notwithstanding its extreme popularity, rejected, on a division, by a majority of 161 to 141 voices.

Although the present ministry were superior in parliamentary, and perhaps even in national, interest, either to the party of Lord North, or that of Mr. Fox separately, yet they were inferior in both their reports to the other two united. As both his lordship and Mr. Fox were equally desirous of returning into power, they now thought proper to join their interests together, and form what was afterwards called the coalition, by which they out-voted the ministers not only in the lower house, but in the upper. A new ministry was therefore



necessary, without which it was impossible to conduct the public business. Lord North and Mr. Fox were appointed secretaries of state, and Lord John Cavendish, Mr. Burke, and other members of the late administration, resumed their employments. The new servants of the crown lost no time in renewing the negotiation for peace, which they at length brought to a happy conclusion.

The ministry of Lord North and Mr. Fox, or as it is usually called the coalition ministry, though composed of men of the most splendid talents, and supported by a large majority in both houses, was never supposed to have been very acceptable to his majesty, as instead of being voluntarily appointed by him, they were said to have found their way into the cabinet by the mere strength of parliamentary interest. The bills they brought forward to regulate the affairs of the East India Company were opposed with so much vehemence, as to cause the removal of the ministry. Letters of dismissal were sent to the cabinet council, and a total change took place; Mr. Pitt was appointed chancellor of the exchequer and first lord of the treasury, Lord Thurlow was reinstated as lord high chancellor, and Mr. Dundas filled the office of treasurer to the navy. The other departments of the state were occupied by the friends of the present party. This was the



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fifth ministry the nation had seen in the short space of two years : an instance of precipitation in the change of public servants unexampled in the history of any country.

The former motion of Mr. Pitt for an inquiry into the representative system having been negatived, he had, previously to his again coming into power, brought forward a specific plan for adding one hundred members to the counties, and abolishing a proportionate number of the burgage-tenure, and other small and obnoxious boroughs. This plan, though supported by Mr. Fox, was negatived by a great majority.

The new ministry, though possessing the favor of the sovereign, and a majority in the house of lords, were yet in a critical situation. They had a powerful majority against them in the house of commons, and it became a question of moment to overcome that difficulty. It was foreseen, it could not be done by any other means than by a dissolution of the present, and the election of a new parliament ; but this was a measure so violent, that the ministry, for a long time, were extremely unwilling to avow their intention of adopting it, and the commons on their side were no less eager to put it out of their power to effectuate this measure. With this view they repeatedly called on the minister to declare, whether he



had formed any such design, but received only evasive answers. They then addressed the king with as little effect. As their last resource, they began to talk of refusing the supplies: but reflecting that this would stop the wheels of government, and be a much greater national calamity than even the dissolution of parliament, they were at last persuaded to grant the supplies, though, at the same time, they laid the minister under the severest restrictions with regard to the expenditure of the money.

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Mean while endeavours were made by some of the most independent and disinterested members of the house, to bring about an accommodation between the parties, and to form a ministry upon so broad and comprehensive a plan, as to include the leading men on both sides. But this was found, after repeated experiments, to be absolutely impracticable. Their views were so different, their mutual jealousies so strong, and their ambition so inordinate, as to preclude any well-grounded hope of ever effecting an unanimity among them. The ministry, however, having gained the supplies, which was their principal object, thought it now no longer necessary to dissemble their intentions; and the parliament was, therefore, dissolved on the 25th of March, 1784, and writs were issued for electing a new one.

The new parliament met on the 18th of May,



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1784, when it plainly appeared that the minister had as great a majority for him in this house of commons as he had against him in the last. The first business which engaged their attention, during the first short session, was Mr. Pitt's famous Commutation Tax, by which the duty on tea was considerably lowered, in order to give a check to smuggling; and to defray the deficiency thereby occasioned in the revenue, an additional tax was laid upon windows. Although the measure was loudly exclaimed against, the bill passed into a law. The next bill introduced by the minister was for regulating the affairs of the East India company nearly upon the same principle with the one he had proposed towards the conclusion of the last parliament. The most exceptionable clauses of it were, that which compels the servants of the company, upon their return to England, to give in, upon oath, to the court of exchequer, an inventory of their real and personal estates; and that by which all persons charged with having committed crimes in India are, upon their return, to be tried, not by a jury like other subjects, but by a particular court erected for that purpose, and composed of three judges, four peers, and six members of the house of commons. The bill, notwithstanding these and many other objections which were made to it, was carried triumphantly through both houses, and passed into a law.



The last act of the first session of the new parliament was the restoration of the estates in Scotland, which had been forfeited during the rebellion of 1745. This measure was strongly opposed by the lord chancellor ; but, notwithstanding his supposed great influence, the bill passed, and received the royal assent.

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Though the minister had succeeded in his endeavours to exclude most of his powerful opponents from a seat in the lower house, he failed in more than one instance. This was particularly the case with Mr. Fox, the most formidable of all his antagonists. Having formerly represented the city of Westminster, this eminent patriot again offered himself a candidate at the general election ; and though he was opposed by Sir Cecil Wray, who was supported by all the strength of the treasury, was yet able, at the close of the poll, to obtain a considerable majority of votes. Mr. Corbett, the high bailiff, strongly attached to the ministry, refused, though the returning officer, to make a return, alleging that many of the votes were illegal. He therefore commenced a scrutiny : but, after having carried it on for some time, was at last obliged to desist, and return Mr. Fox as one of the members : Lord Hood was the other member. Mr. Fox afterwards prosecuted the high bailiff for refusing to make a return, and obtained a verdict against him in the court of common pleas.



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On the 18th of April, 1785, Mr. Pitt brought forward his ultimate plan of parliamentary reform, which he declared to be perfectly coincident with the spirit of those changes which had taken place in the exercise of the elective franchise from the earliest ages, and not in the least allied to the *spirit of innovation*. He wished to bring forward a plan that should be complete, gradual, and permanent; that not only corrected the inequalities of the present system, but would be competent to preserve the purity it restored, and give to the constitution, not only consistency, but, if possible, immortality. It was his design that the actual number of the house of commons should be preserved inviolate. His immediate objects were, to transfer the right of choosing representatives from thirty-six of such boroughs as had already fallen, or were falling, into decay, to the counties, and to such large and populous towns as were at present unrepresented. And he recommended the appropriation of a fund of one million to be applied to the purchase of the franchise of such boroughs, on their voluntary application to parliament. The other most important parts of this bill were the admission of copyholders to an equal right with freeholders, and an extension of the franchise in those populous towns where the electors were few to the inhabitants in general. The intention of the plan was to give



one hundred members to the popular interest, and to extend the right of election to many thousands, who, by the existing provisions of the law, were excluded from this necessary and constitutional privilege. CHAP.  
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The intermediate clauses of this bill were, however, only calculated to provide a compensation for a species of property, which a member of a free state would be ashamed to possess: It never was the intention of the English laws or constitution to allow any man a right of sending members to parliament by his own sole and absolute authority. Members of parliament are intended to represent their fellow-subjects, not a few old uninhabited houses, or a few acres of untenanted land. And he who first purchased a rotten borough, for the sole purpose of sending members to parliament, ought to be punished for his folly or presumption, by being deprived of a property, which, consistent with the spirit of the English constitution, he never could possess. Mr. Pitt's bill, favourable as it was to the proprietors of rotten boroughs, and though marked by the approbation of Mr. Fox in every respect, saving the plan of purchasing franchises of boroughs, was rejected by a majority of 248 to 174 voices.

Previous to opening the budget this year, the



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minister took a general review of the national finances. The whole of the public expenditure he estimated at 14,400,000*l.* per annum. The taxes he thought would produce a million more, and this odd million he proposed to convert into a sinking fund, for the purpose of gradually discharging the public debt, by purchasing in the cheapest funds 250,000*l.* every quarter. The scheme took effect in the course of the ensuing year. The most unpopular taxes imposed this session were those upon female servants and retail shopkeepers. Strong petitions, in particular, were produced against the last of these, by most of the towns and corporations in the kingdom; and although the bill now passed, and the duty continued a long time to be levied, yet so constant and unremitted a clamour was kept up against it, that the minister was obliged to consent to its repeal about three years after, and to supply its place by another kind of impost.

One of the consequences of the American war was the separation of Ireland, in her political capacity, from Great Britain, and the difficulty that thence arose of regulating the commercial intercourse between the two nations. As Ireland had freed herself from all obligation of contributing to the expenses of the empire at large, it was deemed unreasonable she should



enjoy the advantages in trade and commerce she had formerly possessed. To settle this matter in the best and most friendly manner possible, Mr. Orde, secretary to the lord lieutenant, introduced into the Irish parliament a set of propositions, or, as they were afterwards called, resolutions, which, after undergoing some slight animadversions, received the approbation of both houses. The same propositions were soon after opened by Mr. Pitt in the British house of commons; and, although they were opposed by all the eloquence and ability of the anti-ministerialists, they did not appear to excite any great alarm among the people in general. As soon, however, as they began to perceive their dangerous tendency, petitions were presented against them by most of the trading and manufacturing towns in the western parts of England and Scotland. In consequence, the minister was obliged to make so many alterations in his old propositions, and to introduce so many new ones, that when they had passed through both houses, and were sent to Ireland in the form of a bill, they were rejected by the Irish parliament with the highest indignation.

The only remarkable circumstance which occurred in 1786, was the accusations brought against Governor Hastings by Mr. Burke, and his subsequent impeachment. A treaty of com-



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merce with France was entered into with the approbation of both houses, notwithstanding all the objections that were made to it by the leaders of Opposition. A plan was laid down for consolidating the duties of customs and excise, by abolishing all the old laws relative to these two branches of the revenue, and establishing certain new regulations for the collecting of them, so as to render the method of doing it at once more simple, easy, and distinct.

1787. One of the most important objects which engaged the attention of the house of commons during the session of 1787, was an attempt made by the protestant dissenters to obtain a repeal of the corporation and test acts, and who flattered themselves that their recent services were not as yet wholly lost to the recollection of the court. Mr. Beaufoy, member for Great Yarmouth, who brought forward the motion, was ably seconded by Mr. Fox. It was opposed by Lord North and Mr. Pitt, who, however differing in other respects, agreed perfectly in this. Although it is evident, that whatever tends to the debasement of religion diminishes political authority, and weakens the sanction of civil government, this just and salutary measure was rejected by a majority of 78 members.

While the commons were thus engaged in the discussion of this and some other points of no



less importance, the attention of the house of lords was called by Viscount Stormont to a question, in which the constitution of that branch of the legislature, together with the rights of the Scottish peerage, were essentially concerned. It arose out of a circumstance which took place at this time, namely, the creation of two of the sixteen peers of Scotland, the Earl of Abercorn and the Duke of Queensbury to be peers of Great Britain. It was simply, whether or not, after such creation, they could continue to sit as representatives of the peerage of Scotland? The Act of Union was silent upon the subject, and the only precedent in existence, that of the Duke of Athol, upon whom, in 1736, the English barony of Strange devolved by inheritance, was for the affirmative: and it was well known that the opinion of the lord chancellor was in favour of the same side of the question. On the other hand, the negative appeared to Lord Stormont so strongly supported by every principle of equity, analogy, and fair construction, as to induce him to bring the question, in the face of all difficulties, to a public decision. The lords having been previously summoned, the house resolved itself into a committee of privilege, to take into consideration the motion of Lord Stormont, which contained, "that it was the opinion of the house, that the Earl of Aber-

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corn, who had been elected one of the sixteen peers, who, by the Act of Union, are to represent the peerage of Scotland in parliament, having been created Viscount Hamilton, by letters patent, under the great seal of Great Britain, doth thereby cease to sit in the house as a representative for the peerage of Scotland.”

Notwithstanding the weight of the chancellor's opinion, the motion of Lord Stormont was carried by a majority of 52 to 38, and was followed by a similar motion respecting the Duke of Queensbury created Baron Douglas. Soon after, another resolution was passed by the upper house, disqualifying such Scotch lords as have been created peers of Great Britain from voting in the election of the sixteen lords who represent the Scottish peerage in parliament; so that these lords, in point of legislation, have now no farther connection with the Scottish peerage than if they had never belonged to it.

The parliamentary transactions of 1788 were neither numerous nor important. One of the most considerable was a bill introduced in the lower house for granting compensations to such loyalists as had suffered in consequence of the late war with America. The sum required to liquidate the different claims which they had upon government was 1,342,000 pounds. This proposal of Mr. Pitt was received with general



approbation, though Mr. Fox differed from him in some particulars ; and Mr. Burke contended, that the proposed compensation was not a matter of strict justice, and that the claims of the American loyalists rested upon the generosity and compassion of parliament.

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About this time a bill was introduced for the better regulation of the poor in every part of the kingdom. It was proposed to divide the different counties into districts, and to erect a house of industry in each, in the same manner as had been adopted in Norfolk, Suffolk, and other places. The house divided on the second reading of the bill, when it was rejected by a majority of forty-four to ten.

The last business of moment which occupied the attention of parliament, was a bill brought into the house by Sir William Dolben, member for the university of Oxford, to regulate the transportation of slaves from the African coast to the West Indies. This bill, which was intended merely to establish a certain reasonable proportion between the number of slaves and the tonnage of the ships, was violently and obstinately opposed by petitions from the London and Liverpool merchants concerned in that detestable traffic. The evidence adduced at the bar of the house laid open such a shocking account of the manner these miserable people were treated, as to cause humanity to shudder. The customary



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mortality of the voyage from the Slave Coast exceeded seventeen times the usual estimate of human life. A slave ship, when full fraught with this cargo of wretchedness, exhibited the extremes of human misery. Commercial interest could never justify a crime, nor atone for the guilt incurred by an action which reason and justice forbid. The bill was carried up June 18th to the house of lords, where it met with a determined opposition from Lord Thurlow, the Duke of Chandos, and Lord Sydney. It was defended by the Duke of Richmond and Marquis Townshend, in a manner which reflected honor on their understanding and humanity; and it finally passed by a considerable majority.

Besides what has been mentioned, the most material public acts of this session of parliament were; to regulate the Newfoundland fishery; to appoint commissioners for inquiring into the losses occasioned by ceding East Florida to Spain; to appoint commissioners to inquire farther into the losses of the American loyalists, and for granting them relief; and to enable justices occasionally to license theatrical representations.

The year 1789 afforded some variety of events. The most remarkable was the indisposition of the king, who being seized with a malady which totally deranged his moral and physical health, and rendered him for some time incapable of



fulfilling the duties of his high station. To supply the present want of royal authority, a regency was proposed, and it was intended to bestow this dignity on the Prince of Wales, the heir apparent to the crown; but the ministry, or rather the parliament, which was entirely at the devotion of the ministry, thought proper to lay the power they thus meant to delegate under so many restrictions, that the Prince rejected the offer. It was, therefore, in agitation to form another kind of regency, composed chiefly of the ministers themselves, with the Queen at their head. But all these expedients for making up a substitute for the first power of the state were rendered unnecessary by the recovery of the sovereign, who, in a short time, was enabled to resume the reins of government.

A fresh attempt was made this session to procure an act for repealing the corporation and test laws. Mr. Beaufoy again introduced the subject into the house of commons, and observed that the unalterable confidence the dissenters reposed in the disposition of the house to do justice to the injured, and afford relief to the oppressed, had induced them to renew their application to parliament. The motion was supported by Mr. Fox with great force of argument; and opposed, as on the former occasion, by Lord North and Mr. Pitt. On a division, the numbers were, ayes 104, noes 124: so that



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this important question, which probably was more so than the minister had at this time any idea of, was lost by twenty voices only. It might have been regarded as a decisive victory on the part of the dissenters, had they known how to improve their advantage. But their resentment against the court and the minister was not at all abated by the insinuating language by which Mr. Pitt attempted to disguise and palliate his refusal; and the ground they had gained in despite of the power exerted against them, excited a degree of triumph which led to gross and fatal indiscretions.

The subject of the slave trade, which had become the theme of public execration, was now resumed by Mr. Wilberforce, in a speech remarkable for strength of reasoning and persuasive eloquence. He enumerated, in the most feeling manner, the miseries and cruelties inflicted on those unfortunate children of Africa, and reprobated, in the indignant language of truth, the shameless traffic, so dishonorable and inconsistent to the character of a nation, priding itself on its bravery and its freedom. After many weighty and important observations, he moved twelve propositions, which were opposed by Mr. Sawbridge and Mr. Newnham, on the part of the city of London. It was stated, that if the measure was adopted, it would render the metropolis one scene of bankruptcy and



ruin, while Mr. Burke recommended to look beyond the present moment, and to ask themselves whether they had fortified their minds to bear the consequence of the measures they were about to adopt. Mr. Pitt on this occasion, for the first time, explicitly delivered his sentiments upon the subject. He felt satisfied that no argument, compatible with any idea of justice, could be assigned for the continuation of the slave trade, and was eager that the propositions should be entered on the journals, where it was impossible to fail in producing every beneficial consequence which could be desired. Mr. Fox supported the arguments of Mr. Pitt; and, with regard to any regulation of the slave trade, his detestation of its existence led him to remark, he knew of no such thing as a regulation of robbery and restriction of murder. There was no medium; the legislature must either abolish the trade, or plead guilty to all the iniquity with which it was attended.

The subject was resumed about ten days after, for the purpose, it was thought, of voting the propositions. The sentiments of the leading characters in the nation, upon this highly interesting and important subject, were manifestly displayed on this occasion; and the temper of the times is from thence deducible without any difficulty. Before the conclusion of the session, however, an act was passed to



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continue the slave trade regulating bill, for a further limited time.

In the next session of parliament, which met on the 21st of January, 1790, Mr. Flood, so long celebrated in the Irish house of commons as a patriot and orator, and who had for some years sat undistinguished in the British parliament, ventured a bold and happy effort towards a reform in the representative system. He supported his motion by an able and eloquent speech, in which, adverting to the present state of things in France, he declared, "it was the want of timely and temperate reform that had made a revolution necessary in that country." He said, that the house, as it now stood, was the legal, but not the adequate, representative of the people. On the true principle of representation, *every man at full age* ought to be an elector. But granting that property had been the original ground of representation, it had undergone many changes. Barons sat in parliament by patent, without respect to property, and many non-electors possessed a larger share of it than those who were electors. It, therefore, became necessary to introduce a new body of constituents. Mr. Flood then proposed to add a hundred members to the present number, to be chosen in a proportionate ratio with the population of each county, by the resident householders only. As the people had deserved



well of the crown, every privilege, which could in reason be granted to them, ought, therefore, to be allowed. The motion was vehemently opposed by Mr. Wyndham, who had adopted all the eccentricities and deviations from the rule of right which marked the conduct of Mr. Burke, of whom he was the obsequious admirer, but of whose superior lines of character, genius, and eloquence, he was but the humble imitator. Mr. Pitt, complimenting Mr. Flood on the abilities he had displayed, strongly objected to his proposition being brought forward at this particular period. The people at large were now trembling under the panic of innovations; and it would certainly be injudicious to add this difficulty to the reception of the measure to those which it had already been found were too great for it to surmount. To the plan he had no objection. The number of the electors was to be increased; but the precise qualification of those electors had not been ascertained. Mr. Flood, perceiving the general sentiments of the house, even of those members who had formerly favored the idea of parliamentary reform, to be adverse to the motion, at length was persuaded to withdraw his proposition.

In the mean time the business relative to the abolition of the slave trade went on slowly and heavily. Every artifice of procrastination was used on the part of the slave merchants and



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planters, and the whole session passed over in the hearing of evidence and examination of witnesses. During this session, the salary of the speaker of the house of commons, which had hitherto not amounted to three thousand a year, and even that partly made up of perquisites, was raised to the net annual sum of six thousand pounds.

On the 10th of June, 1790, the king terminated the session, and dissolved the parliament by proclamation on the day following. The new parliament assembled on the 25th of November. To defray the expense of the armament then fitting out, Mr. Pitt, resolving to suffer no permanent increase of debt, proposed various temporary taxes, which would discharge the incumbrance in four years, with the assistance of five hundred thousand pounds which he had in contemplation to take from the dividends lying in the Bank of England unclaimed. This attempt excited a just alarm in all the great chartered companies, and in the commercial and mercantile world in general. It was a measure of injustice and violence, calculated to compel the bank to relinquish their trust, when the original and express purpose of it was unaccomplished. When the money is once paid into the bank, it ceases to be public money, and is instantly converted into private property, which must there remain a sacred



deposit till it is claimed by the private individuals to whom it belongs. If the recent and fluctuating balances of the bank were thus liable to seizure, the minister might one day order the money to be paid into the bank, and the next he might, without any violation of public faith, command it to be repaid into the exchequer. After much hesitation and contest, the minister consented, by way of compromise, to accept a loan of five hundred thousand pounds from the bank, without interest, so long as a floating balance to that amount remained in the hands of the cashier.

Soon after the recess of parliament, February 21st, 1791, Mr. Mitford, a lawyer of eminence, moved, with the previous sanction and approbation of government, for a bill to relieve the English catholics from the legal penalties still remaining in force against them. The proposed Act of Toleration was confined to such of the catholics as should subscribe a certain declaration or *protest* against the assumed authority of the pope, &c., drawn up in terms to which it could scarcely be expected the majority of the catholics could conscientiously accede.

Mr. Fox objected to the bill, not for what it did, but for what it did not, contain. He entreated that the bill might be made general: "Let the Statute Book," said this great statesman, and advocate of toleration, "be revised,



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and strike out all those laws which attach penalties to mere opinions." The bill, however, passed in its present form. In consequence of which, a most invidious and mischievous line of distinction was drawn between the protesting and non-protesting catholics, neither of whom were chargeable with, or suspected of, the slightest tincture of disaffection to the state.

In the course of the session, Mr. Fox, ever alive to the cause of liberty, moved for a bill to ascertain the rights of juries in the matter of libel. With respect to the pretended distinction between law and fact, he observed, "that when a man was accused of murder, a crime consisting of law and fact, the jury every day found a verdict of guilty. And this was also the case in felony, and every other criminal indictment. Libels were the only exception, the single anomaly. He contended, that if the jury had no jurisdiction over libels, the counsel who addressed them on either side as to the criminality of the publication, were guilty of gross and insolent sarcasm. It was admitted by all parties, that a writing might be an overt act of treason. In this case, if the court of the King's Bench were to say to the jury, "Consider only whether the criminal published the paper—do not consider the nature of it—do not consider whether it correspond to the



definition of treason or not"—would Englishmen endure that death should be inflicted without a jury having had an opportunity of delivering their sentiments, whether the individual was or was not guilty of the crime with which he was charged?" Mr. Fox wished to know, "whether the modern doctrine of libels did or did not extend to high treason?" On its transmission to the house of lords, the bill was opposed, on the second reading, by the lord chancellor, on the pretext of its being too late in the session to discuss a bill of such importance. Lords Camden and Loughborough, with whom Lord Grenville concurred, defended the principle of the bill, which, however, was finally postponed.

The abolition of the slave trade, which had so much engaged the time and attention of parliament in preceding years, was renewed this year, two days after the session commenced. On this occasion, Mr. Wilberforce, its avowed and distinguished patron, introduced his motion with a copious and masterly display of argument in favour of that measure. He remarked, with all the eloquence of feeling and truth, that the history of this commerce was written in characters of blood. "Let us," said he, "turn our eyes for relief from this disgraceful scene to some ordinary wickedness." But no relief was as yet to be obtained from



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the justice and humanity of the house. The whole of the session, five months, passed over without producing any thing more than occasional reports from the select committee appointed to examine evidence on the subject. The act of the last session, for regulating the passage of slaves from Africa to the West Indies, was, however, extended, as a measure which promised some utility.

The parliament was not convened until the 31st January, 1792, when Mr. Pitt displayed a picture of national prosperity in such glowing colours as surpassed all that the warmest imaginations could venture to pourtray. He endeavoured to dazzle the nation with brilliant and permanent hopes of peace and prosperity, and to inculcate, that as far as there can be reliance on human speculation, we had the best grounds, from the experience of the past, to look with satisfaction to the present, and with confidence to the future. With such dazzling splendour, and under such fallacious hopes, arose the dawn of that year doomed to set in darkness, calamity, and blood.

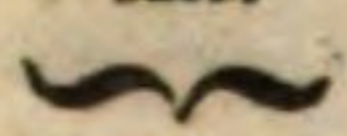
As the slave trade had been so amply discussed in preceding parliaments, it was natural to suppose, it would be resumed in the present on the first convenient opportunity. On the 2nd of April, the house resolved itself into a committee, at the instance of Mr. Wilberforce,



who moved, at the close of an able and eloquent speech, a second time, the question of abolition. As the nation at large had interested itself in this business, it was at last determined to concede what now became, perhaps, dangerous to withhold. On the resignation of the Duke of Leeds, as secretary of state, he was succeeded by Mr. Dundas. On this important question being discussed, he recommended the adoption of a middle and moderate plan, such as would reconcile the interests of the West India Islands, with the eventual abolition of the slave trade, and therefore moved, that the word "gradual," might be inserted before "abolition."

Mr. Pitt, who had at all times supported the measure of abolition, decidedly opposed the amendment, and conjured the house not to postpone, for one moment, the great and necessary work of abolition. "Reflect," said he, "on the 80,000 persons annually torn from their native land! On the connections which are broken! On the friendships, attachments, and relationships that are burst asunder! There is something in the horror of it that surpasses all the bounds of imagination. How shall we repair the mischiefs we have brought upon that continent. If, knowing the miseries we have caused, we refuse now even to put a stop to them, how greatly aggravated will be the guilt



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of Britain ! Shall we not rather count the days and hours that are suffered to intervene, than to delay the accomplishment of such a work ? I trust we shall not think ourselves too liberal, if we give to Africa, the common chance of civilization with the rest of the world. If we listen to the voice of reason and duty, and pursue this night the line of conduct which they prescribe, some of us may live to see a reverse of that picture from which we now turn our eyes with shame and regret. We may live to behold the natives of Africa engaged in the calm occupations of industry, in the pursuits of a just and legitimate commerce. We may behold the beams of science and philosophy breaking in upon their land, which at some happy period, in still later times, may blaze with full lustre ; and joining their influence to that of pure religion, may illuminate and invigorate the most distant extremities of that immense continent. Then may we hope, that even Africa, though last of all the quarters of the globe, shall enjoy, at length, in the evening of her days, those blessings which have descended so plentifully upon us in a much earlier period of the world—

— Nos primus equis oriens afflavit anhelis ;  
Illic sera rubens accendit lumina vespæ.

In this view, as an atonement for our long and



cruel injustice towards Africa, the measure now before the house most forcibly recommends itself to my mind. The great and happy change to be expected in the state of her inhabitants is, of all the various and important benefits of the abolition, in my estimation incomparably the most extensive and important.

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Notwithstanding the powerful and eloquent reasoning of Mr. Pitt, and other advocates for the abolition, the amendment was carried, on a division, by a majority of sixty-eight voices. Mr. Dundas then moved, "that the importation of negroes into the British colonies should cease on the 1st of January, 1800." This, on the motion of Lord Mornington, was, after great difficulty, and much debate, altered to the 1st of January, 1796. A series of resolutions, founded on this basis, was then agreed to, and sent up for the concurrence of the house of lords, where it met with most determined opposition. As the measure of the abolition had been supported in a peculiar manner by universal popularity, the nation felt itself justly offended to see the Duke of Clarence, the third son of the sovereign, commence his political career with violent declamation against this favorite question, and invective against its supporters, whom he foolishly represented as actuated merely by religious fanaticism. To protract, and, if possible, get rid of the busi-



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ness, the lord chancellor moved, "that evidence be heard," not before a select committee, according to the proposition of Lord Grenville, but "at the bar of the house." This was seconded by Lord Hawkesbury, the well known and inveterate enemy of the abolition, and being agreed to, no farther progress was made during the remainder of the session.

Mr. Pitt having, in his speech on the motion for the repeal of the test, avowed, in terms the most unequivocal and unqualified, the right of the dissenters to a full and complete toleration; Mr. Fox embraced the opportunity of bringing forward, in the course of the session, a motion for the repeal of those penal statutes, which, notwithstanding the existence of the toleration act, were still in force against those who, in any manner, impugned the doctrine of the Trinity. Mr. Pitt appeared on this occasion somewhat embarrassed, and rested his opposition chiefly on the disuse and oblivion into which the acts in question had fallen, and the dangerous alarm which might be excited by the repeal—disclaiming, in warm terms, the principles and character of a persecutor. Mr. Fox, in reply, remarked, that he knew not how to distinguish between a persecutor and an advocate for penal laws in matters of religion, which was the precise definition of the term. As to the general alarm, of which Mr. Pitt was appre-



hensive, it was the bitterest satire upon the spirit of his own administration, to suppose the temper of the public so fatally changed as not to endure the repeal of laws so execrable, and, until a recent period, so generally the subject of detestation. The motion was rejected by a majority of seventy-nine.

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In the preceding session of parliament, Mr. Fox had brought a bill into the house of commons to ascertain the rights of juries in the matter of libel, and to declare them judges of the criminality as well as of the publication. It had passed the commons, but was suffered to lie on the table of the house of lords, during the remainder of the session, chiefly from the opposition of the lord chancellor. The venerable Earl Camden advocated the principles of the bill with the most forcible eloquence; Lord Loughborough alone, among the law lords, supported it, and Lord Grenville expressed himself very decidedly in its favour.

This year Mr. Fox again brought the business before the commons, and in the course of the session it was carried triumphantly through both houses, and passed into a law, notwithstanding the most active opposition from Lords Thurlow, Kenyon, and Bathurst. Soon after Lord Thurlow resigned the seals, and Lord Loughborough succeeded him.

In consequence of a national spirit of discon-



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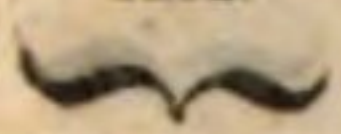
in the strongest language, in the spring of the year a society was formed under the name of the "Friends of the People," for the ostensible purpose of effecting a reform in parliament, and supporting constitutional liberty against arbitrary encroachments, on the principle so often stated, and so ably enforced, at one period, by Mr. Pitt, and other advocates of reform, presuming that all necessary and beneficial reform would follow in sure and regular gradation. Thirty members of parliament enrolled themselves in this association, in which were also comprehended many of the most respectable characters in the kingdom, for knowledge, abilities, and independent principles. It is worthy of remark, that this most laudable and useful association, this broad and lofty mound thrown up for the defence of the constitution against the extension of royal prerogative, seemed to excite more the alarm of government than all the other associations united. When Mr. Grey, himself a member of this new society, gave notice of his intention to move, in the course of the ensuing session, for an inquiry into the state of representation, Mr. Pitt rose with unusual vehemence to declare his "total disapprobation of introducing a discussion of such difficulty and importance, at a period so critical and dangerous as the present. This, he affirmed,



was no time for experiments, and if he was called upon either to risk this, or for ever to abandon all hopes of reform, he could say he had no hesitation in preferring the latter alternative. He saw, with concern, the gentlemen to whom he alluded virtually united with others who professed the reform of abuses, and meant the subversion of government." The expediency and policy of timely and temperate reforms were, on the other hand, powerfully combated by the friends of the projected motion. "As to the obnoxious allies of the late associates," Mr. Fox said, "the objection might be completely retorted by asking the minister, 'Whom have you for your allies?' On the one part there are infuriated republicans, on the other, the slaves of despotism. The first are the rash zealots of liberty, the latter its inveterate and determined foes." But the consternation of ministers was evident by a royal proclamation, almost immediately issued, for the suppression of all seditious writings, and against all illegal correspondence, exhorting the magistrates to vigilance, and the people to submission and obedience.

Addresses from all parts of the kingdom were presented to his Majesty, and the ministry finding their strength, commenced prosecutions against a vast number of persons: amongst whom was Thomas Paine. Notwithstanding



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the professional skill of Mr. Erskine, whom he had engaged as counsel, he was found guilty of the charge, but foreseeing the probability of the event, had previously absconded to France.

Among various other remarkable trials, those of Daniel Holt and William Winterbottom, are worthy of notice. The former, a printer of Nottingham, was convicted and sentenced to two years imprisonment, for republishing, *verbatim*, a political tract, originally circulated by the Thatched House Tavern Association, of which Mr. Pitt and the Duke of Richmond had been members. The latter, a dissenting teacher at Plymouth, of virtuous and highly respectable character, was convicted of *sedition*, and sentenced to four years' imprisonment in the gaol of Newgate for two sermons preached in commemoration of the revolution of 1688. The indictment charged him with affirming, "that His Majesty was placed upon the throne on condition of keeping certain laws and rules—and if he does not observe them, he has no more right to the crown than the Stuarts had." All the whigs in the kingdom might, doubtless, have been comprehended in the indictment. And if the doctrine thus affirmed be denied, the monstrous reverse of the proposition follows—that the king is bound by no conditions or laws; and that, though resistance to the tyranny of the Stuarts might be justifiable,



resistance under the same circumstances to the house of Brunswick, is not. This trial, for the cruelty and infamy attending it, has been justly compared to the celebrated one of Rosewell in the latter years of Charles the Second, to which the occurrences of 1792 exhibit, in various respects, a striking and alarming parallel.

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It is impossible either to deny or disguise the fact that the perpetual misconduct of government during the present reign ; the misfortunes and miseries by which it has been characterised ; its follies, its vices, and its crimes, have given occasion to a new and very serious investigation of the principles of the British constitution ; and amongst men of philosophic reflection may be discerned a great abatement of that enthusiastic ardour with which they were once in the habit of thinking and speaking of a form of government, which has been found, by fatal experience, not incompatible, for a long series of years, with the grossest neglect or perversion of those ends for which government is alone instituted. Amongst the most palpable and pernicious of the existing abuses, must undoubtedly be reckoned the enormous and overwhelming influence of the crown ; the inequality of the national representation ; the long duration of parliaments ; the rapid and monstrous increase of the national debt ; and of the civil and military establishments ; the



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oppression, absurdity, and iniquity, connected with the present ecclesiastical system; the municipal tyranny exercised over the poor, under cover of the poor laws, originally intended for their relief and protection; the amazing number of superfluous places, pensions, sinecures, and lucrative appointments, by which individuals are aggrandized and enriched at the expense and impoverishment of the public. When these evils are remedied, the constitution of Britain will have a fair trial, and the beneficial effects it has in itself to produce, will be fully ascertained. But until this happy period arrives, all reflections can only be applicable to the present deformed and destructive system of administrative government.

The Revolution, which had by this time occurred in France, materially changed the face of affairs throughout Europe. The causes of the deposition of the French monarch, and the nature of the provocations and injuries which preceded and produced that event, not being well understood in this country, it made an impression on the minds of a great part of the people unfavorable to its principles, already perverted and biassed by the violent declamations of Mr. Burke and his partizans. The horrid massacres of September entirely alienated their minds from the Revolution, although

these detestable enormities could not, in any rational sense, be said to originate in the Revolution, but arose from the opposition made to its establishment; and so much was the nation terrified at the idea of political innovation of any kind, that the name of reform became the subject of indiscriminate reprobation. Under this impression, an association, sanctioned by government, was formed in London, for the protection of liberty and property against republicans and levellers. The rage of associating spread throughout the kingdom, and resolutions were every where subscribed, expressive of loyalty and attachment to the king and constitution, and abhorrence of all levelling and republican doctrines. There is, as Helvetius observes, a description of men with hearts incapable of virtuous emotion, furiously enraged against every one who wishes to convulse the empire of imposture; who aim against him the very passions themselves despise, and terrify weak minds by incessant harangues on the dangers of novelty and innovation; as if truth must necessarily banish virtue out of the world; as if every thing partaking of its nature was so productive of vice, that no one can be virtuous who is not unenlightened; as if the very essential qualities of morality demonstrated this idea, and consequently that the study of this science was prejudicial to society; they wish

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to make the people venerate received and established prejudices, in the same manner as the Egyptians of old were kept prostrate before the sacred crocodile of Memphis.

Previous to this extraordinary display of loyalty, it had not been unusual for the friends of liberty in England to transmit addresses to the French convention, declaratory of their praise and admiration. The manner in which their addresses had been received had irritated administration. The decree of the 19th of November filled up the measure of their iniquity in the view of the court of London, and was regarded as nothing short of an act of open aggression. Whatever just cause of resentment; whatever right to reparation the government had, inflamed with indignation, it sought not reparation, but revenge. A royal proclamation was issued on the first of December, 1792, announcing the alarming intelligence “that notwithstanding the late proclamation of the first of May, the utmost industry was still employed by evil disposed persons within the kingdom, acting with persons in foreign parts, with a view to subvert the laws and constitution, and that a spirit of tumult and disorder *thereby excited*, had lately shown itself in acts of *riot and insurrection*; and that, these causes moving him thereto, his majesty had resolved forthwith to embody part of the militia of the

kingdom." On the Sunday, another proclamation was issued for convening the parliament, (which stood prorogued to the 3rd of January, 1793,) on the 13th of December; the law requiring, that if the militia be drawn out during the recess of parliament, and this can be only in case of invasion, or actual *insurrection*, parliament shall be assembled within the space of fourteen days.

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The alarm caused by these proceedings was inexpressible. Every one imagined the existence of a plot, which was so much the more terrible, from its being invisible and incomprehensible. The minister did not hesitate to increase the general consternation by marching troops into the metropolis, doubling the guard at the Bank, and repairing the fortifications of the Tower.

On the meeting of parliament the real views of the court became manifest. "I have," said his majesty, "carefully observed a strict neutrality in the present war on the continent, and have uniformly abstained from any interference with respect to the internal government of France; but it is impossible for me to see, without the most serious uneasiness, the strong and increasing indications which have appeared there, of an intention to excite disturbances in other countries, to disregard the rights of neutral nations, and pursue views of conquest

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and aggrandizement, as well as to adopt towards my allies, the states-general, measures which were neither conformable to the laws of nations, nor to the positive stipulations of existing treaties. Under these circumstances his majesty thought it right to have recourse to these means of prevention and internal defence with which he was intrusted by law, and to make some augmentation of his naval and military force."

On moving the address in answer to the speech, a memorable debate ensued. Never did the genius of Mr. Fox shine so conspicuously. "This," said he, "is the most momentous crisis, not only that I have ever known, but that I have ever read of in the history of this country; a crisis not merely interesting to ourselves, but to all nations, and on the conduct of parliament depends the fate of the British constitution—perhaps the future happiness of mankind. His majesty's speech contains a variety of assertions of a most extraordinary nature; we are told there exists an insurrection in this kingdom. An insurrection! Where is it? Where has it reared its head? Although this insurrection has existed fourteen days, ministers have given us no light whatever, no clue, no information, where to find it. It has been alleged, as a proof of disaffection, that the countenances of many wore the face

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of joy when the intelligence arrived of the Duke of Brunswick's retreat. What! is it a sufficient demonstration of republicanism, that men should rejoice in the armies of despotism combating against liberty? Could any man who loves the constitution of this country wish success to the Duke of Brunswick after reading a manifesto which violated every principle of justice, humanity, freedom, and true government? Who will dare to defend that system of tyranny and coercion, which insists that Englishmen shall not indulge any genuine feelings of their own, which tells them they must not think but by permission, that they must rejoice and grieve as it suits the caprice or the pleasure of ministers? Doubtless, there are speculative persons in this country, who disapprove of the system of our government: and there must be such men as long as the land is free, for it is the very essence of freedom for men to differ upon speculative points. From the instant that opinion shall be held dependant upon the will of the minister or the magistrate, I date the extinction of our liberties as a people."

As the ultimate object of republicans and levellers was aided by plunging the nation in a war without due and previous inquiry; Mr. Fox conjured parliament to avoid involving the people in so dreadful a calamity, without coolly

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reflecting on its necessity. He concluded with moving an amendment, simply pledging the house "that inquiry should be made into the facts stated in his Majesty's speech." After a very long debate, the amendment was negatived by a great majority.

In the house of lords, the address was carried without a division, but not without a powerful opposition from the Duke of Norfolk, and Lords Lansdown, Rawdon, and Stanhope.

The late alarms had caused a great defection amongst the opposition or whig party. At the head of the peers who seceded were the Prince of Wales, the Duke of Portland, and Lords Fitzwilliam, Spencer, and Loughborough, who, on the resignation of Lord Thurlowe at this period, was advanced to the chancellorship. In the lower house were Mr. Burke, Mr. Windham, Sir Gilbert Elliott, Mr. Anstruther, &c., who acquired by this means the popular appellation of *Alarmists*. On bringing up the report the succeeding day, the debate was resumed with fresh vehemence. Mr. Fox severely censured ministers for not having interposed the mediation of Great Britain, in order to preserve the peace of Europe; and moved an amendment "beseeching his Majesty to employ every means of honourable negotiation for the purpose of preventing a war with France." This motion was opposed by Mr. Burke in a frantic speech, in which he

affirmed, "that to send an ambassador to France would be the prelude to the murder of our sovereign." Mr. Pitt was at this time not a member of the house, having vacated his seat by the acceptance of the lucrative sinecure of the Cinque Ports, void by the death of the Earl of Guildford, once so famous as Lord North. In the absence of the minister, Mr. Dundas entered into a tedious and elaborate vindication of administration, and concluded with the rash and confident prediction, that "if we were forced into a war, it *must* prove *successful* and *glorious*." Mr. Fox's amendment was negatived without a division.

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Not dismayed at the ill success of these attempts, Mr. Fox on the 15th of December, moved at the close of a speech, which only served to demonstrate how incompetent are the utmost efforts of human wisdom to work conviction in minds distempered by prejudice and passion "that a minister be sent to Paris to treat with those persons who exercise provisionally the executive government of France."

Mr. Windham laid down as a maxim of policy "that to *be justified* in negotiating with France, it should be a matter of necessity, not of choice."

Happy, dignified opportunity to treat," exclaimed Mr. Sheridan, "when necessity, a necessity arising from defeat and discomfiture, from shame and disgrace, shall compel us to

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negotiate on terms which would leave us completely at their mercy!—How consolatory, to be able to boast, that we are at the same time *justified* and *UNDONE*! But we are told that to treat with France would give offence to the allied powers, with whom we are eventually to co-operate. Are we then prepared to make common cause on the principles, and for the purposes for which those despots have associated? Are the freemen of England ready to subscribe to the manifesto of the Duke of Brunswick, that detestable outrage on the rights and feelings of human nature! that impotent and wretched tissue of pride, folly, and cruelty, which had steeled and maddened the brain of all France! The question is not merely whether we should go to war or not? but on what principle should it be conducted, and to what end directed? To restore the ancient despotism of France? Impossible! Disputes and causes of complaint existing, how were they to be terminated but by some sort of negotiation? But we are told that the dignity of the nation forbade a public and avowed communication with the present ruling powers in France. Was the dignity of the nation better consulted by the mean subterfuge of an indirect and underhand intercourse? Was it sacrificed by a magnanimous frankness, and sustained only by dark and insidious disguise? Far from recalling the

embassador of England from Paris at the late perilous crisis, a *statesmanlike administration* would have regarded the part of minister at Paris, as the situation which demanded the first and ablest talents in the country. It was a situation which afforded scope and interest for the noblest mind that ever warmed a human bosom. The French had been uniformly partial, and even prejudiced, in favour of the English. What manly sense and generous feeling, and, above all, what fair truth and plain dealing might have effected, it was difficult to calculate. But the policy which discarded these, and which substituted, in its stead, a *hollow neutrality*, was an error fatal in its consequences, and for ever to be lamented." The motion in the end was negatived without a division.

Mr. Grey, Mr. Erskine, Mr. Adam, and Mr. Francis, distinguished themselves by very able and eloquent speeches on the part of the opposition. The desertion of their friends far from dispiriting the faithful few who remained, seemed to animate them to still higher and more ardent exertions of patriotic zeal. Mr. Fox published a very animated and dignified address to his constituents, the electors of Westminster, stating his reasons for his parliamentary conduct. The conclusion of this celebrated address is particularly striking:—"Let us not attempt," says he, "to deceive ourselves. Whatever

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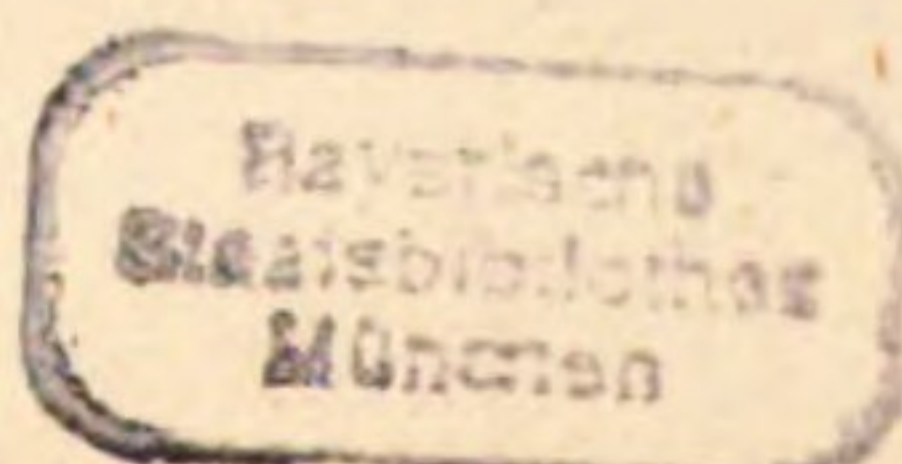
possibility, or even probability, there may be of a counter-revolution from internal agitation and discord, the means of producing such an event, by external force, can be no other than the conquest of France. The conquest of France! O calumniated crusaders, how rational and moderate were your objects! O much injured Louis XIV. upon what slight grounds have you been accused of restless and immoderate ambition! O tame and feeble Cervantes, with what a timid pencil and faint colors have you painted the portrait of a disordered imagination!"

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Every effort on the part of the executive council of France to avert the war was ineffectual. With reluctance the republic was forced to a rupture so contrary to its inclination. On the twenty-fourth of January, 1793, the French ambassador was ordered to depart the kingdom, and, on the first of February, a decree passed the National Convention, declaring the Republic of France at war with the King of Great Britain, and the Stadtholder of Holland.

END OF VOL. I.

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